

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

Name: Name suppressed

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Partially
Confidential

Submission to NSW Legislative Council on the Inquiry into the development of the Transport Oriented Development Program

EXECUTIVE SUMMARY

This submission welcomes the inquiry into the development of the Transport Oriented Development Program (the TOD) and is concerned primarily with the TOD Part 2 regarding the 31 precincts where the proposed TOD SEPP applies. It considers two aspects: the process (or lack thereof) in developing the TOD and the adverse impacts of the TOD.

In summary, this submission argues that:

1. the development of the TOD was ill conceived and the process of development represents a serious breach of public trust let alone a failure to afford natural justice to affected parties; and
2. the TOD fails to take into account the unique aspects of each of the 31 precincts it will affect by applying a 'one-size-fits-all' approach to development, ignoring decades of good planning by local councils which have managed their local areas in accordance with community values.

TOD PROGRAM PART 2 DEVELOPMENT AND PROCESS

The NSW Government's Transport Oriented Development Program Part 2 proposes new planning controls to be delivered through a new State Environment Planning Policy (SEPP) aimed at enabling faster delivery of more housing close to jobs and amenity. It has focused on precincts of up to 400 metres around 31 stations in Sydney and NSW.

These 31 stations have allegedly been identified for a shortlist for more detailed assessment using a multi-criteria analysis with the selection criteria being:

1. Strategic alignment to government strategies such as Local Housing Strategy, regional plans;
2. Status and timing of a masterplan and rezoning;
3. Percentage of fragmented land and high proportion of strata developments;
4. Proportion of government owned land to deliver social and affordable housing; and
5. Rebalance of housing growth across NSW.

How and why these criteria have been chosen and how they have been applied to the 305 Sydney Trains, Sydney Metro and Intercity stations within the Six Cities regions resulting in the choice of the 31 stations is not available for public scrutiny. The December 2023 Program document states at page 8:

This was informed by an evidence-based approach that used planning, infrastructure, and

spatial data, along with expert advice and feasibility analysis.

However, no documentation has been made publicly available to support this statement.

Further, what this set of criteria fails to consider is the impact of significantly higher density housing on the character and amenity of the 31 precincts – on either its built or natural environment.

In particular, what will the impact be on:

- the environment and biodiversity;
- tree canopy and climate change;
- heritage and conservation protections;
- existing infrastructure including water supply, sewerage systems, roads and traffic, schools and hospitals;
- the character of an entire local government area; and
- rail system, given that no consideration has been given to the level of train traffic actually stopping at those stations and whether there is capacity for significant increases.

The TOD Document states that existing environmental and heritage controls will apply to the extent they are not inconsistent with the new standards while simultaneously acknowledging that the TOD Program “will result in significant change” in the 31 chosen precincts. This means that environment and heritage controls will be totally disregarded, as 6-7 storey highrise apartment blocks with no side setbacks (thereby removing tree canopies) within **heritage conservation areas** close to train stations cannot be rejected by local council under the TOD.

Where is the evidence as to how the 31 stations were chosen and how have the impacts identified above been taken into consideration?

The Ku-ring-gai Council Submission to the TOD states at page 5, the TOD Document “describing the changes does not contain sufficient detail to understand and respond to changes of this magnitude and the [NSW] government will not release evidence base on which the decision was made claiming ‘Cabinet-in-Confidence’”.

This is a significant breach of public trust.

FAILURE TO AFFORD NATURAL JUSTICE TO AFFECTED PARTIES

Natural justice and due process was not afforded to residents in the 31 precincts in relation to the TOD Program. There has been no public consultation on such a significant urban planning policy. Residents have not been allowed to voice their concerns to the Government on the intended impacts of high-density rezoning within the TOD. And furthermore, local government and its planners will be locked out of performing their duties and ensuring community views are

upheld when the TOD comes into force.

On what basis does any elected Government have the right to impose such fundamental damage to these areas without giving the affected communities the right to be heard and to comment. This is unheard of in NSW Government history.

Why does the Government refuse to take a more consultative approach?

And why does the State Government refuse to work in partnership with Local Government, but instead seeks to remove its long held strategic planning role?

It is abundantly clear that the NSW Government proposal offloads planning controls into the hands of private developers whose objective is to maximise their return on investment. We received letters from developers seeking to purchase and capitalise from our home, well before we even heard about the Government's proposals to rezone our area (please see attached letters). It begs the question, how were they able to identify target properties of a certain size and location, so very quickly in the process. We can reach no conclusion other than developers had successfully lobbied the NSW Government to do their bidding and open up suburbs of heritage precincts across Sydney, as they had inside knowledge of what was to come.

The introduction of new State Planning Policies which override local planning controls are of concern, particularly at a time when broader Regional and District strategic planning required by the EP&A Act is well progressed. This is severely undermining the existing statutory strategic planning framework in NSW and is a concern that has been represented by many local Councils.

Furthermore, the proposed Part 2 of the TOD Program is clearly in breach of governments commitment under the National Housing Accord commitment: to 'working with' local governments to deliver planning and land-use reforms that will make housing supply more responsive to demand over time.

The National Housing Accord pursued along with the Australian Local Government Association, was an initiative to address housing supply and affordability nationally, and its commitment was to clearly work with local governments to deliver planning and land-use reforms, not prevent councils from continuing to manage planning in their area.

What is being proposed is a top down approach, imposing planning controls on local government, and not allowing local authorities who know their area better than State Government, to do their job.

Local planning rules and plans should not be dismissed to allow developers to create medium and high-density dwellings in heritage conservation areas which will, according to the Ku-ring-gai Council's "Proposed changes to NSW Housing policy Community Information Session January 2024" include developments with:

- No side setbacks
- Blank party walls to neighbours
- Apartments with no external windows
- No natural ventilation
- No minimum parking requirements, and
- 3:1 floor space ratio apartments.

Why weren't community members in the 31 areas affected by the proposed TOD and planned SEPP consulted and given an opportunity to provide feedback to the NSW Government, especially since they may face up to 7 storey buildings adjacent to them without the opportunity to object or have Council step in to protect them?

The TOD must be discarded for the lazy and destructive planning policy that it is. Sound planning principles do not need to be discarded as we seek to address Australia's affordable housing requirements.

IGNORING SOUND PLANNING PRINCIPLES AND GOVERNANCE

We appreciate the NSW Government's objective to increase access to affordable housing across Sydney. But we reject the current NSW Government Transport Oriented Development Program, and the severity and manner in which rezoning is being forced across Sydney, fundamentally changing the way Sydney looks, functions and survives.

Housing ownership in Sydney has often been a journey from one's initial smaller home, often renting, to eventually taking out a loan to buy a larger home typically located closer to work. This happens over time. After decades of working, saving and progressing, our family now lives as a multi-generational household, in a heritage protected federation home, approximately 400 metres from a TOD station. We are located within a long standing well protected conservation area of low-density homes, mostly heritage in nature, all situated within significant vegetation of established trees and space between adjoining homes. We bought and invested in our home some three years ago to enjoy the amenity we appreciate and maintain to this day.

We are in what is sadly becoming the last remaining and unique heritage precinct depicting an important aspect of the history of Sydney, and we are extremely concerned that the NSW Government's proposal to change zoning, to allow medium to high density housing in our area and across 4 adjacent stations in the one LGA, without Council having refusal rights to protect our conservation areas, will destroy what has been so effectively protected for over a century.

Our local council, Ku-ring-gai Council, has gone to great lengths to carefully plan our LGA in a way that limits medium to high density housing to two main commercial precincts, around Lindfield and Gordon stations, the immediate vicinity around those two train stations, and along the Pacific Highway corridor up to and including the railway line. Those two stations have more frequent train services and existing commercial precincts that would better support high density.

Council approved developments in those areas provide requisite access to infrastructure and transport, shops and schools, while not adversely destroying green space, allowing for appropriate set backs for apartment developments in residential streets, and planting of deep rooted trees and vegetation to maintain the long standing amenity of our LGA. That careful planning approach to development must be allowed to continue and Council is best placed to shape and administer that. Rather than discounting their effort, State Government could set requisite targets and allow Councils to meet them under sound planning principles.

SEVERITY OF THE PROPOSAL:

It is baffling that the NSW Government seeks to take a bulldozer approach to Council's careful planning efforts for our homes and precincts, by allowing the following developments as a matter of course rather than seeking to find a more informed and consultative middle ground, determined with the input of local planners:

- Allowing all dual occupancies (two dwellings on the same lot) in all low-density residential zones, with a minimum lot size of 450 square metres, which is a very small lot size for the Ku-ring-gai area. Currently dual occupancies are generally not permitted in Ku-ring-gai so the TOD is a severe change in development.
- Allowing terraces, townhouses and two storey apartment blocks near railway stations and possibly other local centres without any Council amendment or rejection rights. Currently these multi-dwelling housing types are permitted in Ku-ring-gai but limited by certain provisions including setbacks and minimum vegetation requirements.
- Allowing 6 to 7 storey mid-rise apartment blocks within 400m of railway stations and possibly other local centres with no or limited setbacks from side boundaries despite pre-existing and carefully managed heritage conservation areas. Currently mid-rise apartment blocks of up to 5 storeys are permitted in Ku-ring-gai with conditions but are carefully located.
- Allowing affordable housing bonuses of up to 30% for floor space ratio and height, on top of the proposed new controls, making development even more intense rather than requiring development to already include 30% affordable housing minimums.
- Overriding existing planning controls such as those for heritage and environment conservation, making a mockery of hard fought-for protections for the benefit of future generations.
- Introducing 'non-refusal standards' for the new planning controls by which development consent may not be refused, fundamentally removing the role of planning by Local Governments.
- Significant detrimental impacts on heritage, trees, biodiversity, traffic and stormwater.
- Significant tree loss across Ku-ring-gai, one of the last remaining carbon sinks for greater Sydney.
- No consideration being given to the necessary infrastructure to support density such as schools, transport and community facilities.
- All while removing Council's rights of refusal over heritage and conservation areas.

DESTRUCTION OF HERITAGE AND LOCAL CHARACTER:

The NSW Government proposal imposes a disproportionate impact on Ku-ring-gai's heritage by placing the highest density on land containing the largest concentration of significant historic development in the area where over 40% of land within 400 metres of four stations is listed as a heritage conservation area or a heritage item.

These significant elements of environment, sustainability and heritage should not be sacrificed for unspecified housing density targets.

The proposed changes are massive and sudden in town planning terms.

We live in an area that is on the boundary of the proposed TOD rezoning. It is unclear whether we fall within it or just adjacent to it. Either way we are impacted by the broader proposal and therefore provide comment on it.

The 31 train stations subject to Part 2 of the TOD SEPP are within different LGAs with different local characters and physical attributes. The proposed set of uniform blanket pre-eminent controls for all of these areas, contain no apparent recognition of local character and no provision for the local character to be preserved.

Does the NSW Government want all of Sydney to look like Zetland, Mascot or Green Square? Had we wanted to live alongside high rise developments we would have made different housing choices three years ago when we last moved house.

We are advised by Council that the TOD Program and the Low and Mid-rise SEPP purport to continue to allow "merit assessments". However, where any local (LEP & DCP) controls preclude or constrain realization of the 3:1 FSR and/or the 21m height non-refusal standards then they would be of no effect.

Most controls in the Ku-ring-gai LEP and DCP are designed to protect local character, amenity, heritage, biodiversity and other special environmental areas, and therefore will reduce or preclude realization of the new height and FSR non-refusal standards under the TOD SEPP.

Any claim that there will continue to be opportunity for genuine merit assessment, taking into account those heritage, biodiversity and other special environmental matters that the residents of Ku-ring-gai have long said are important to them, is therefore disingenuous.

IMPACT ON ENVIRONMENT AND BIODIVERSITY:

The inevitable outcome of the NSW Government's proposal on our natural flora and fauna is projected to be significant. Ku-ring-gai Council projects that around 40,000 trees* could be cut down in its LGA under the NSW Government's proposed Transport Oriented Development' (TOD) plan and associated planned SEPP. How does the NSW government plan to achieve its objective of delivering a 70% cut in emissions by 2035 when the proposed housing plan and SEPP will irreversibly destroy the only carbon sinks in the Sydney metropolitan area, namely Ku-ring-gai and Hornsby, that are meeting the Government's own target of 40%?

(*40,000 trees – 32000 within R2, 8000 within TOD).

We urge this inquiry to strongly recommend to the NSW Government that it do further homework, collaborate with Local Governments and better understand the expected loss of established trees in areas like Ku-ring-gai LGA, to ensure that developers are not allowed to build to the scale and severity allowed for in the Government's current proposal.

The NSW Government's planned Housing SEPP appears to prioritize housing density at the expense of biodiversity conservation, presenting inconsistencies with crucial state Acts, such as the Biodiversity Conservation Act 2016 and the Water Management Act 2000. The lack of detailed environmental assessments further amplifies concerns about potential adverse effects on biodiversity and waterways. Why is the NSW Government proposing a development policy that will lead to the extinction of up to:

- seven endangered ecological communities,
- two critically endangered species
- 700 native plant species
- 300+ vertebrate species and numerous invertebrates

IMPACT ON INFRASTRUCTURE AND TRANSPORT:

The 31 train stations subject to Part 2 of the TOD SEPP are within different LGAs with different local characters and physical attributes. The proposed set of uniform blanket pre-eminent controls for all of these areas, contain no apparent recognition of local character, local transport traffic levels, nor the frequency of trains and lack thereof for some train stations such as Killara and Roseville stations.

They also do not reflect the fact that State Government trains do not stop anywhere near as often in some of the 31 named stations than at others, and therefore do not provide equivalent transport access – which is meant to be at the core of the proposed State Government proposal. A blanket one-size-fits-all approach simply cannot and does not work.

We urge the Government to recognise the infrequency of trains stopping at Killara and Roseville stations, as opposed to others on the same line, before it seeks to impose a blanket rezoning across all 31 nominated stations. Planning NSW should liaise with Transport NSW and analyse the variance in frequency of trains stopping across the 31 stations and adjust any planning efforts for enhanced density, accordingly. Similar consideration should be given to compare areas such as Dulwich Hill with Killara, where the former also enjoys access to light rail.

If a blanket one-size-fits-all approach to rezoning is acceptable to the State Government, then why doesn't the planned TOD policy apply to all metropolitan train lines and stations across greater Sydney?

IN CONCLUSION:

The proposed Transport Oriented Development' (TOD) and planned SEPP is fundamentally lazy policy making. It gives no regard to biodiversity, infrastructure, train frequency, heritage and traffic impacts. Nor does it ensure that any new high density dwellings won't be left empty, as are many dwellings currently in Ku-ring-gai.

Why is the NSW Government taking such a reckless approach to how Sydney looks, functions and survives? And fundamentally, such a lazy approach to determining an affordable housing strategy?

What research has been done to ensure that the dwellings developers will be empowered to build, will be affordable?

How can the State Government ensure that the new dwellings will be environmentally sustainable?

How does the NSW government plan to achieve its objective of delivering a 70% cut in emissions by 2035 when the proposed housing plan and SEPP will irreversibly destroy the only carbon sinks in the Sydney metropolitan area, namely Ku-ring-gai and Hornsby, that are meeting the Government's own target of 40%?

Will the State Government ensure that necessary infrastructure and train frequency will be provided to handle the projected influx in the Ku-ring-gai LGA from the proposal?

Why hasn't the NSW Government introduced a vacancy tax when the Victorian government has, ensuring that thousands of homes across Sydney are not left vacant, reducing supply and contributing to higher Sydney housing prices?

What research has been done to ensure that the State Government's proposal will actually result in more affordable housing rather than simply assist developers?

How will the proposed set of uniform blanket pre-eminent controls for all 31 named areas, recognise local character and provide for local character to be preserved? Does the NSW Government want all of Sydney to look ubiquitous?

A one-size-fits-all approach to planning ignores the wonderful diversity in heritage, environment and communities that make Sydney such a special global city. We need a Master Plan that has been co-designed by Sydney's residents, businesses, local governments and the State Government, working together to ensure a sustainable future for Sydney and our people.