

Submission
No 228

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

Name: Name suppressed

Date Received: 28 March 2024

Partially
Confidential

Ms Sue Higginson MLC
Chair
Portfolio Committee No 7 – Planning and Environment
Development of the Transport Oriented Development

28 March 2024

Dear Ms Higginson,

Re: Parliamentary Inquiry into the Development of the Transport Oriented Development Program (TOD)

Thank you for the opportunity to comment on the TOD, though I query the ability of this Inquiry to have an impact, when the TOD will commence on 1 April prior to the findings of the Inquiry's final report later this year.

The NSW Government's TOD is the largest rezoning in Australia's history. It is unbelievable that the NSW Government has no Master Plan and is leaving its urban development, in particular the building of social and affordable housing only to property developers, who mainly 'drip feed' new housing supply to keep house prices buoyant. If the NSW Government wants social housing, perhaps it should be looking to the Singaporean model of social housing for inspiration?

I live in the Ku-ring-gai area which has both remarkable environment and heritage attributes and where the "natural" dominates "the built". In 2007 the National Trust of Australia (NSW) nominated Ku-ring-gai's Urban Conservation Areas within the context of the Original Blue Gum Forest for the inclusion on the list of the '*Top Ten Heritage at Risk Places in Australia*'.

If fully implemented, the TOD will effectively deforest, and diminish Ku-ring-gai which in turn will have negative consequences for the rest of Greater Sydney's environment, including biodiversity extinction, higher carbon emissions, heat stress, losing an established natural carbon sink and loss of heritage. In decimating Ku-ring-gai's tree canopies and those of other LGAs it seems impossible for the NSW Government to achieve its net zero emissions target by 2050 and its commitment to the Paris Climate Agreement.

1. Undemocratic Process

Disclosure Timing – It was unreasonable the TOD was released shortly before the Christmas holiday period, when businesses, Councils and residents are distracted with end of year events and closures for the holidays. Further it was unreasonable to expect Councils to provide their respective submissions on TOD a few weeks later before the end of January 2024.

Insufficient information - There has been insufficient disclosure and unsubstantiated claims on the impacts. I've met many people who can't fathom the TOD could be possible. They don't believe their lifestyle, culture, heritage, and properties could be compromised in such a devastating way, which is understandable and justifiable as we live in a democracy based on the (now seemingly fragile) premise that governments don't interfere with our lives in such a drastic manner.

Confusing information and lack of detail – Why are the *Explanation of Intended Effect: Changes to create low and mid-rise housing* (EIE) and the TOD created as two separate policies and not as a comprehensive Master Plan – were they drafted by separate groups?

How does one measure the 400m radius concept from a railway? 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 a home may be impacted.

Lack of consultation – I'm unaware of any consultation taking place. I understand that when council representatives reached out to the NSW government officials, they didn't receive adequate information. Further, the public was not allowed to comment on the impact of the TOD.

The extraordinary impact on the Ku-ring-gai environment and heritage indicates 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 Ku-ring-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.
- With worker and construction material limitations, it is impossible for developers to meet the quantity projections of government.

Sustainability - This is not good sustainable town planning, nor does the outcome of this planning enable Greater Sydney to become a climate resilient city. It's also a lost opportunity for the NSW Government to ensure all proposed new dwellings have ambitious energy standards to combat climate change and promote energy efficiency (with energy efficiency comes lower household bills). To achieve this requires detailed professional and expert planning and active engagement with the community.

There are no controls to reduce energy consumption in multi storey buildings which will require high energy consumption. Nor do the plans mandate a requisite low energy consumption, such as heat pumps, reverse cycle air conditioning, EV charging stations, renewable green energy, composting, and sufficient deep soil landscaping.

Non-disclosure - There is an insidious lack of transparency – the cabinet-in-confidence analysis that apparently underpins the proposals should be released to the public. 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? 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 be efficient and cope with the increase in passengers, let alone our roads which are forecast to carry an extra 1000 cars per hour?

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

Misinformation by Ministers – Premier Chris Minns and other ministers continue to say in public that heritage will be protected. This is currently untrue, and this lying should stop.

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 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, 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 the government considered these risks of litigation?

Conclusion

The TOD's 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, causing neighbours to have difficult conversations with each other and not good for social cohesion. There is also the real risk that people will be scammed, particularly the elderly.

The lack of disclosure, consultation, information, and the fast-tracked timing of the commencement date, show complete disregard for the NSW public's rights. Nor can the NSW Government provide well documented and researched evidence that what is being proposed, will meet the objectives.

Social 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. Unfortunately, it doesn't seem the TOD in its current form will achieve this. This is lazy planning at best, with most likely an undesirable legacy for generations to come.