

INQUIRY INTO DEVELOPMENT OF THE TRANSPORT ORIENTED DEVELOPMENT PROGRAM

Organisation: STEP Inc

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STEP Inc

Community-based Environmental Conservation since 1978

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Portfolio Committee No. 7 – Planning and Environment

Parliamentary Inquiry into the development of the Transport Oriented Development Program

Dear Madam Chair and Committee members

Thank you for the opportunity to address the Inquiry as a witness and trust you will be amenable to us tabling this supplementary submission to the Inquiry, as additional information has become available with regard to our local and other precincts within the Transport Oriented Development (TOD) Program.

In relation to the Terms of Reference, we will be providing information in this supplementary submission which addresses the following points but not necessarily detailed in the following order:

- (a) the analysis, identification or selection undertaken by the Government, the Premier's Department, The Cabinet Office or the Department of Planning, Housing and Infrastructure (Department) into:
 - (i) the eight Transport Oriented Development Program accelerated precincts
 - (ii) the 31 (*now 37*) Transport Oriented Development Program precincts where the Transport Oriented Development Program State Environmental Planning Policy (SEPP) applies
 - (iii) any of the 305 Sydney Trains, Sydney Metro and Intercity stations within the Six Cities Region which were considered as part of any of the Transport Oriented Development Program locations
- (b) the probity measures put in place by the Government, the Premier's Department, The Cabinet Office and the Department
- (c) the development of the Transport Oriented Development Program policy approach by the Government
- (d) consultations undertaken with councils, joint regional organisations and communities during the preparation of the Transport Oriented Development Program State Environmental Planning Policy
- (e) ongoing opportunities for review and input by councils, joint regional organisations and communities, including consultations with renters, key workers and young people needing affordable housing in relation to the Transport Oriented Development Program State Environmental Planning Policy
- (i) the heritage concerns with the Transport Oriented Development Program including but not limited to the concerns of the Heritage Council
- (j) the enabling infrastructure capacity for every station selected or considered as part of the Transport Oriented Development Program
- (k) the impact on localised environment and amenity values caused by the Transport Oriented Development Program
- (l) the existing or potential measures and programs analysed, considered or implemented by all NSW Government agencies to support additional housing density, including the housing series reports published by the NSW Productivity Commissioner
- (o) the impacts of the proposed Diverse and Well-Located Homes process and program
- (r) any other related matters.

- (a) The analysis, identification or selection undertaken by the Government, the Premier's Department, The Cabinet Office or the Department of Planning, Housing and Infrastructure (Department) into:
- (i) the eight Transport Oriented Development Program accelerated precincts
 - (ii) the 31 (now 37) Transport Oriented Development Program precincts where the Transport Oriented Development Program State Environmental Planning Policy (SEPP) applies.

We are particularly concerned about the analysis, identification and selection of the precincts.

The *Transport Oriented Development Program* dated December 2023 detailed the land zonings in which the TOD will be applicable (excerpt below).

The changes will allow:

- Residential apartment buildings in all residential zones (R1, R2, R3, and R4) within 400m of identified stations
- Residential apartment buildings and shop-top housing in local and commercial centres (E1 and E2) within 400m of identified stations

The *NSW Government Department of Planning, Housing and Infrastructure Transport Oriented Development (TOD) Program – Assessment Criteria* document outlines the *Stage 1 Eligibility Criteria* and *Stage 2 Planning and Infrastructure Review*, for the 31 (now 37) TOD precincts (excerpt below).

A comparison of the DPHI eSpatial Portal, together with satellite images, LEP Land Zoning Maps and Bushfire Prone Land Maps for some of these precincts, is attached at **Appendix 1**, which supports our concerns.

TOD - State Environment Planning Policy (SEPP)

The TOD SEPP will increase the capacity for more mid-rise housing such as 3-6 storey apartments and mixed-use development within 400 metres of 31 stations.

Stage 1: Eligibility Criteria

- All electrified heavy rail, metro and intercity trains within the Greater Sydney, Hunter, Central Coast and Illawarra regions.
- Within 30 minutes of a metropolitan centre including Sydney CBD, Parramatta, Newcastle, Gosford or Wollongong by rail or were Sydney Metro stations, enabling good access to jobs and services.
- Capacity for additional homes near the transport station.
- Capacity on the Sydney Trains network to support additional passengers from the housing growth.
- Existing residential land (i.e. land that is zoned residential) near a station.
- Alignment with government priorities for housing growth.

Stage 2: Planning and infrastructure review

In the second stage of the assessment process, a review of the shortlisted stations was undertaken to determine:

- Planning and land use considerations and constraints, like flood zones or bushfire risk zones, land fragmentation, council-led strategic planning, and open space.
- Transport, water and wastewater capacity to support additional growth.
- Independent third-party economic feasibility assessment to determine rezoning potential at each station and the amount of affordable housing.

Stage 3: Approval by the Minister for Planning and Public Spaces

Consistent with the decision of NSW Cabinet, the Minister for Planning and Public Spaces approved the final list of stations.

Stage 1: Eligibility Criteria: We draw your attention particularly to the 2nd and 5th points of the Criteria, in reference to the 37 stations selected. A small sample of these 37 stations are detailed in this submission to illustrate our concerns regarding the selection process. These stations are:

- Cockle Creek station, Boolaroo – Lake Macquarie LGA
- Tuggerah station – Central Coast LGA
- Dapto station – Wollongong LGA
- Corrimal station – Wollongong LGA

Cockle Creek station, Boolaroo – Lake Macquarie LGA

As stated in the *Transport Oriented Development Program* dated December 2023, residential flat buildings will be allowed in R1, R2, R3, R4, E1 & E2 zones within 400m of the TOD stations.

As stated in the *NSW Government Department of Planning, Housing and Infrastructure Transport Oriented Development (TOD) Program – Assessment Criteria, Stage 1 Eligibility Criteria*, stations that had “Existing residential land (ie land that is zoned residential) near a station were considered.

Cockle Creek station, Boolaroo, has a grand total of **NIL** residential lots within 400m of the station. The Land Zoning is variously RE1, RE2, MU1, E3, E5, SP1 and SP2. There is a small corner of R3 which contains eight Retirement Village units. The closest road, which is a railway overpass is 100m from the station. There is no capacity for additional homes near the station using the Government's stated selection criteria. There are additional land use constraints which will be raised in the following *Stage 2 Planning and Infrastructure Review* section.

MU1 zoning is not equivalent to any of the E1 & E2 zones or the R1, R2, R3 & R4 zones, as required under the TOD SEPP (Appendix 2). The then Department of Planning and Environment *Equivalent Zone Tables 2022* for the Lake Macquarie LGA (excerpt below) show that E1 Local Centre zones is equivalent to the previous B1 Neighbourhood Centre & B2 Local Centre zones, and the E2 Commercial Centre is equivalent to the previous B3 Commercial Core. Whereas MU1 Mixed Use is equivalent to the previous B4 Mixed Use. The MU1 zoning is not an equivalent zoning to the TOD criteria of existing R1, R2, R3, R4, E1 & E2 zones.

Lake Macquarie Local Environmental Plan 2014

Current Business and Industrial Zones	Employment Zones
B1 Neighbourhood Centre	E1 Local Centre
B2 Local Centre	
B4 Mixed Use (Cardiff Town Centre)	MU1 Mixed Use*
B3 Commercial Core	E2 Commercial Centre
B4 Mixed Use	MU1 Mixed Use
B7 Business Park	E3 Productivity Support
IN1 General Industrial (Myrtle Street, Teralba)	E4 General Industrial
IN2 Light Industrial	
IN1 General Industrial	E5 Heavy Industrial*
IN4 Working Waterfront	W4 Working Waterfront

Tuggerah station – Central Coast LGA

Tuggerah station is in a similar situation. The Land Zoning around the station is variously RE1, C2, C3, IN1, IN2, B3, B4, B5, B6 and SP2. There is a small corner of R1 which contains approximately 20 residential lots. There is no capacity for additional homes near the station using the Government's stated selection criteria. The map comparisons in **Appendix 1** show this to be the case.

Dapto station – Wollongong LGA

The western side of the station is all RE1, RE2, RU2, C3 and E4. The eastern side is predominantly E3, E4, MU1 and RE2. In the existing E2 and E3 zones is the Dapto Leagues Club, a primary school and the Dapto shopping centre. There are a total of approximately 80 standard residential housing lots within the R2 & R3 zones, many of which already contain mid-rise housing. There is minimal capacity for additional homes near the station using the Government's stated selection criteria.

Wollongong Local Environmental Plan 2009

Current Business and Industrial Zones	Employment Zones
B1 Neighbourhood Centre B2 Local Centre	E1 Local Centre
B3 Commercial Core	E2 Commercial Centre
B4 Mixed Use	MU1 Mixed Use
B6 Enterprise Corridor B7 Business Park	E3 Productivity Support
IN1 General Industrial IN2 Light Industrial	E4 General Industrial
IN3 Heavy Industrial	E5 Heavy Industrial
IN4 Working Waterfront	W4 Working Waterfront

Corrimal station – Wollongong LGA

While there is more capacity surrounding this station within areas of R2 & R3 zoning, the DPHI eSpatial viewer shows that the hatched land designated as appropriate for mid-rise housing includes the Corrimal High School and the separate Corrimal Primary School, together with a large tract of RE1 recreation land. These areas should not be included in the TOD, as shown on the eSpatial Portal, as being suitable for mid-rise housing.

If these stations, and potentially others of the 37 stations, do not meet the DPHI and Government Assessment Criteria, it raises the question of what other criteria was used to make those selections.

RECOMMENDATION: The Inquiry itself undertakes, or recommends an independent review be undertaken, of all 37 stations to reassess the Land Zoning within 400m surrounding each station, to identify whether all 37 stations meet the TOD selection criteria.

Stage 2 Planning and Infrastructure Review: We draw your attention particularly to the 1st and 3rd points of the Review, in reference to the 37 stations selected. A small sample of these 37 stations are detailed in this submission to illustrate our concerns regarding the selection process. These stations are:

- Cockle Creek station, Boolaroo – Lake Macquarie LGA
- Teralba station – Lake Macquarie LGA
- Booragul station – Lake Macquarie LGA
- Roseville station – Ku-ring-gai LGA

Cockle Creek station, Boolaroo – Lake Macquarie LGA

The station at Cockle Creek is situated directly between the Glencore former Macquarie Coal Preparation Plant with its tailings dam, and the site of the former Pasminco lead and zinc smelting works which ceased operating in 2003. Below is a quote from website of the NSW Member for Lake Macquarie LGA, Mr Greg Piper MP -

“More than a century of lead and zinc smelting at the former Pasminco site at Boolaroo has left a legacy of soil contamination in northern Lake Macquarie. The Lead Abatement Scheme (LAS) was implemented between 2007 and 2013 to address soil contamination and associated health risks, but its effectiveness was called into question following a 2014 research study by Macquarie University students which found evidence of elevated lead levels remaining in local yards and public grounds.”

Mr Piper provides a video on his website that describes his study tour to a similarly contaminated site at Bunker Hill in the United States.

<https://www.gregpiper1.com/boolaroo-lead-contamination>

Mr Piper describes how the town of Bunker Hill USA faces a mammoth remediation of the area, not just the site of the plant itself but also of the surrounding township. Of course the airborne emissions spread out over a wide area. **Not even a fence post hole can be dug or a driveway installed in Bunker Hill without the contaminated soil being required to be removed** and replaced with uncontaminated soil, let alone a house being constructed. Unfortunately Australia appears to lag well behind the rest of the Western world when it comes to contamination regulation, to the detriment of local residents' long term health.

Mr Piper's website also provides a link to an EPA report on the lead and zinc smelting contamination at Boolaroo -

<https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/lead/160770-lead-expert-working-group-report.pdf>

There are some very disturbing sections and tables in that report -

Lead emissions from Pasminco Cockle Creek Smelter

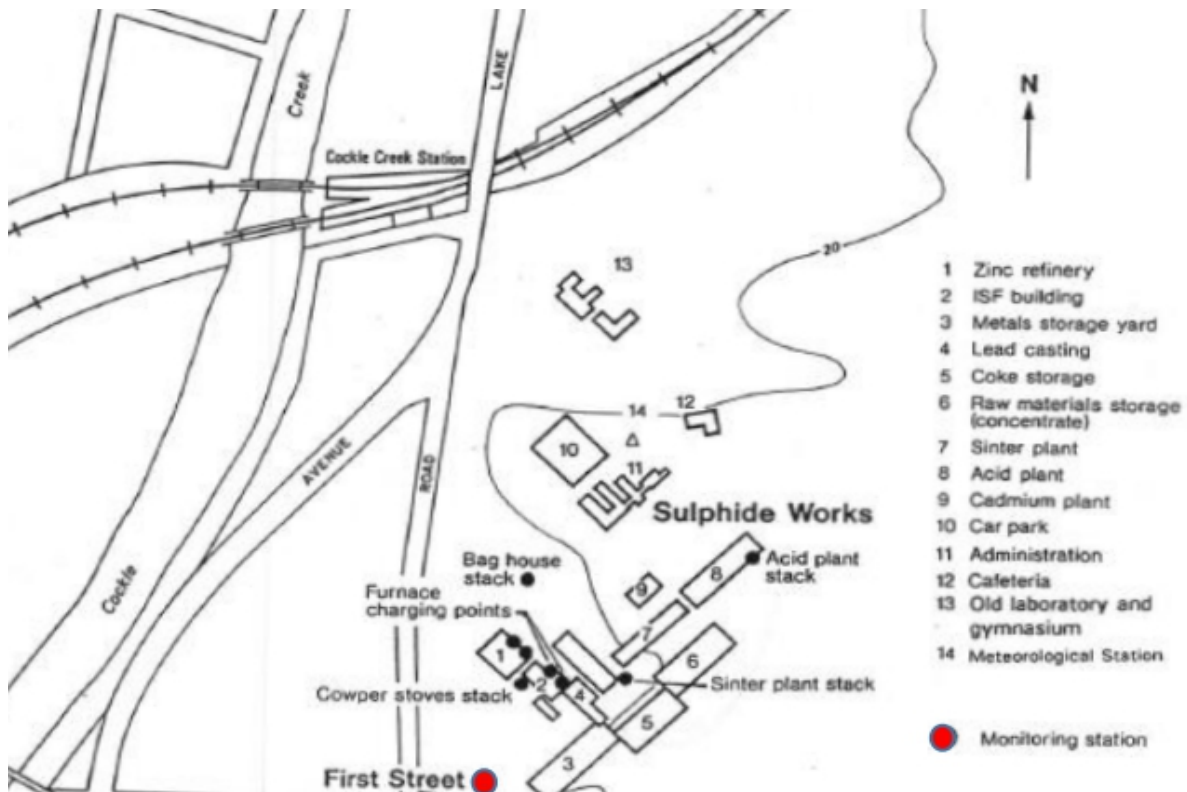
Prior to the enactment of the Protection of the Environment Operations Act, there were minimal pollution control measures in place at the smelter. Significant quantities of lead and other air impurities were consequently released from the smelter causing widespread environmental degradation, as well as high lead concentrations in the soil and housing of the North Lake Macquarie suburbs of Boolaroo, Argenton and Speers Point.

In 1982–83 the State Pollution Control Commission (SPCC) declared that lead pollution levels observed at Boolaroo (in air, groundwater and surface water) were the highest in New South Wales (see Prior & Partridge 2010).

Table 5: Lead emissions generated by the Pasminco Cockle Creek Smelter over time

Source: EPA.

Year	Lead emissions per year / emission reduction activity
1985	92,000 kg or 92 tonnes (full smelting operations)
1995	Lead-in-air reduction strategy
1999	Amendment to development approval for increased production and stronger environmental controls
2000	14,000 kg or 14 tonnes
2001	20,000 kg or 20 tonnes
2002	11,000 kg or 11 tonnes
2003	11,000 kg
2003–4	2,300 kg or 2.3 tonnes (plant shut down in 2003)



It can be seen from the diagram above just how close the lead and zinc smelting plant and the sulphide works were to Cockle Creek Station at Boolaroo.

The *Stage 2 Planning and Infrastructure Review* was supposed to consider constraints on land use. We question whether DPHI adequately considered the constraint of the Lake Macquarie suburb of Boolaroo having the highest lead pollution levels in ground and surface water in NSW.

The *Stage 2 Planning and Infrastructure Review* was supposed to have an independent review of the economic feasibility of the proposed TOD stations. We question whether the independent review adequately considered the cost of remediation of the soil and ground water that would be borne by the developers of each site within the Cockle Creek Station, in accordance with the *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 4.

RECOMMENDATION: The Inquiry itself undertakes, or recommends an independent review be undertaken regarding the health risks of the lead pollution to TOD construction workers and future residents in the TOD precinct.

RECOMMENDATION: The Inquiry recommends that an independent assessment of the cost of effective remediation works in the TOD precinct, using best practice strategies from Bunker Hill in the United States.

RECOMMENDATION: The Inquiry investigates or recommends an independent investigation into how Cockle Creek station was selected as a TOD precinct.

Teralba station – Lake Macquarie LGA

The majority of the properties on the western side of Teralba station and railway line are shown on the Lake Macquarie Bushfire Prone Land Map as being on Bushfire Category 1, Category 2, or buffer zones. All three of these Bushfire Prone Land Map Categories have been excluded from the Low and Mid-Rise Housing Policy, under the *SEPP (Housing) 2021 cl. 141B Land to which part applies (1) (a)*, due to the increased risk to life and property of residential densification in these zones (**Appendix 3**).

It therefore makes no sense whatsoever to allow even higher densification in these bushfire zones adjoining Teralba station, for the Transport Oriented Development (TOD) Program. Furthermore, the Teralba station precinct is in the line of a direct fire run from the Sugarloaf State Conservation Area. The worst bushfires are fanned by hot dry westerlies and nor-westerlies during Australian summers – the very direction that a megablaze would come from the Sugarloaf State Conservation Area.

Since 2002, Australia has had the top three largest fires in the world. In 2020 the Gosper's Mountain Fire started to the west of the Hawkesbury River. It was the largest fire in Australian history. This fire destroyed 2,448 homes and sadly 26 lives were lost. It was the bushfire for which the term “megablaze” was coined. It was started by a lightning strike and burnt for 107 days, tearing through over half a million hectares. At one stage it moved 12km in just two and a half hours, a very fast fire run. Additional lightning strikes and spot fires contributed to making the fire bigger and bigger.

Considerable firefighting resources were stationed on the east banks of the Hawkesbury River to hold back the fire and prevent the megablaze from jumping over the Hawkesbury River and getting into the rural and residential areas of Hornsby Shire. Fire experts estimated that had the fire jumped the Hawkesbury River, the fire could have easily reached the North Shore in about a day. The only thing that eventually stopped the progress of the fire was heavy rainfall.

It is not a matter of if, but when and where the next megafire will take hold. Densification of residential precincts in areas that are at a high risk of a megafire makes no sense, particularly when the only way out of the area is a road or rail line that runs parallel to a fire-front.

Appendix 1 contains the relevant mapping for this area.

Booragul station – Lake Macquarie LGA

The next station south in the Lake Macquarie LGA is Booragul station. The eSpatial mapping for this station shows that this TOD precinct allows redevelopment for high rise on a high school site, their playing fields, plus two retirement villages and is immediately adjacent to a cemetery. We believe each of these areas are unsuitable for inclusion in the TOD precinct, particularly when other TOD precincts have excluded school sites that are within the 400m radius of the station.

ALL of the properties on the western side of Booragul station and railway line and many on the eastern side, which are included in the TOD precinct, are shown on the Lake Macquarie Bushfire Prone Land Map as being on Bushfire Category 1, Category 2, or buffer zones. All three of these Bushfire Prone Land Map Categories have been excluded from the Low and Mid-Rise Housing Policy, because of the increased risk to life and property of residential densification in these zones.

It therefore makes no sense whatsoever to allow even higher densification in these bushfire zones adjoining Booragul station, for the Transport Oriented Development (TOD) Program. Again, the Booragul station precinct is in the line of a direct fire run from the Sugarloaf State Conservation Area.

NSW must not become complacent in the face of increasing bushfire risks. In 2018 the town of Paradise California was overrun by an urban firestorm that obliterated much of the town, killing 85 people and destroyed 18,000 structures including 11,000 homes. Although the fire started some 20km from Paradise, spotfires ahead of the fire-front quickly spread the fire until it formed one huge fire-front. The two roads out of the town were cut off leaving the town's population trapped. Six years later, the town's population is only one third of what it was before the fire.

Planning for future densification must consider the potential for a megablaze when selecting precincts for residential population increases. Paradise showed that even urban areas can be overwhelmed. While it is understood that many regional areas wish to increase their population and their housing stock, and that decentralisation to the regional areas is desirable, this planning for decentralisation must be undertaken in a manner that ensures lives and properties are not put at unnecessary risk.

Roseville station – Ku-ring-gai LGA

The TOD precinct on the western side of the station and railway line includes quite a few properties that are shown on the Ku-ring-gai Bushfire Prone Land Map as being within the bushfire buffer zone. Again, this category has been excluded from the Low and Mid-Rise Housing Policy, because of the increased risk to life and property of residential densification in this zone and these properties should therefore not have been included in the TOD precinct.

A major fire in 1994 destroyed homes in western Roseville. Ku-ring-gai LGA, is the third most bushfire-prone Local Government Area (LGA) in NSW and is surrounded on three sides by national parks and bushland reserves. A major issue for the LGA is evacuation. While the Department has said that it will liaise with councils regarding evacuation issues, there is nothing in the TOD SEPP that considers evacuation issues in the Ku-ring-gai LGA.

The Pacific Highway follows a ridgetop which is parallel to any fire-front coming from the east or west. Congestion on that highway makes it very difficult for residents to evacuate. Extensive ember attack which causes small spot fires can cause house-to-house ignition. It's not just the flames at the fire-front that do the damage. Nearly 90% of Australian house losses during bushfires are not from flames engulfing the walls, but embers lodging in gutters, in roof cavities, under the floors, and spreading into the house. During a major fire, police would likely close the Pacific Highway due to the smoke, heat and embers, preventing evacuation. NSW Rail would also have to close the rail line.

The *Stage 2 Planning and Infrastructure Review* was supposed to determine land use constraints including bushfire risk zones. However all of the four TOD station precincts examined above contain significant numbers of properties in bushfire-prone land and/or the precincts are at risk of a future megafire.

A comparison of the DPHI eSpatial Portal, together with satellite images, LEP Land Zoning Maps and Bushfire Prone Land Maps, is attached at **Appendix 1**, which supports our concerns regarding the above listed stations.

It should be noted that we have only looked at handful of the 37 stations and yet the problems with those selections was quickly identifiable by comparing the maps with the Portal.

It appears from the *Planning and Infrastructure Review* that the only “Independent” review was with regard to “economic feasibility”, not environmental or land use constraints.

RECOMMENDATION: The Inquiry recommends that an independent review be undertaken of all of the 37 TOD precincts and 8 accelerated precincts that considers all planning and land use constraints, not just the economic feasibility of a precinct, within the designated precinct but also extending out to the wider surrounding area.

RECOMMENDATION: The Inquiry recommends that bushfire-prone land including vegetation hazards Category 1, 2, 3 and buffers be excluded from all TOD precincts, which would be consistent with the Low and Mid-Rise Housing Policy exclusions.

(b) The probity measures put in place by the Government, the Premier's Department, The Cabinet Office and the Department.

The above examples of a sizeable proportion (20%) of the TOD station precincts raises concerns about the probity measures put in place for this program. The precincts analysed in this submission either did not meet DPHI's assessment criteria, including the primary criteria of existing applicable zoning planning constraints, and/or there was no external review of important land use constraints including bushfire risk and contamination.

This raises important questions about how these station precincts were selected if they did not meet DPHI criteria and/or it appears there was an inadequate review of land use and environmental constraints and economic feasibility.

RECOMMENDATION: The Inquiry reviews the probity measures with regard to the selection process for the TOD station precincts.

(o) The impacts of the proposed Diverse and Well-Located Homes process and program

While bushfire impacts are being discussed in this supplementary submission, it is important to also look at the bushfire impacts of the Diverse and Well-Located Homes program. We are concerned that the Diverse and Well-Located Homes Program did not properly consider the impacts of bushfire evacuation.

While some Local Government Areas (LGA) that have significant bushfire risks such as the Blue Mountains LGA were exempted from the Program, other LGAs such as Hornsby and Ku-ring-gai LGAs were not. Yet those LGAs have bushfire evacuation issues that are just as significant as the Blue Mountains. Below is an analysis of bushfire evacuation issues in Hornsby Shire with reference to Rural Fire Service (RFS) concerns.

Under a GIPA Application, correspondence was obtained from the Rural Fire Service (RFS) to Hornsby Shire Council whereby in 2011 the RFS advised Council that it had identified areas along the Pacific Highway "*where significant intensification of population would impact the community as a whole*".

The RFS thus advised that "***the provisions of high rise development in this area may further exacerbate this issue. As such, the NSW RFS advises that any high rise developments in this nominated area should be avoided***". Medium density housing along the Pacific Highway corridor north of Mt Colah has subsequently been refused by Council.

The RFS updated this advice on 28 August 2023 in a letter titled "*Confirmation of RFS position regarding housing investigations north of Yirra Road, Mount Colah*". The letter states "*It is understood that before Council undertakes consideration of areas for potential rezoning to facilitate medium density housing, comment is requested from the Rural Fire Service (RFS) regarding constraints or exclusions to investigations north of Yirra Road, Mount Colah*".

The letter goes on to state that "*Investigations for rezoning to facilitate medium density housing north of Yirra Road, Mount Colah **must consider the strategic planning requirements within Chapter 4 of Planning for Bush Fire Protection 2019.** Increased densities should not place existing and/or future development at an increased risk, nor should it cause or add to existing evacuation issues*". PBP 2019 now "*provides proponents with a framework for assessing bush fire risk against land use planning decisions*" states the RFS correspondence.

Below are the relevant excerpts from Chapter 4 of Planning for Bush Fire Protection 2019:

Strategic planning is the first stage in the planning process. It is needed to ensure that businesses and future development are not exposed to an unacceptable risk of bush fire.

The strategic planning phase includes state-level planning, regional planning, LEPs, DCPs and Masterplans or Precinct Plans.

4.1 Strategic principles

Strategic planning occurs at a state, regional or local government level. It often covers a large area, can include a number of different land uses, and establishes longer term development options for an area.

Land use planning can be an effective management tool in minimising or avoiding the impact of natural hazards such as bush fire. Land that is prone to hazards like bush fire should not be developed unless the hazard can be managed appropriately. Local land use strategies and LEPs should consider and identify land affected by natural hazards and direct development away from inappropriate and constrained lands.

4.2 Strategic planning in bush fire prone areas

Strategic development proposals in bush fire prone areas require the preparation of a Strategic Bush Fire Study. The level of information required within such a

this document should be carried out. If the strategic issues cannot be resolved then the proposal cannot comply with PBP and will not be supported by the NSW RFS.

A Strategic Bush Fire Study will include, as a minimum, the components in Table 4.2.1 (see

The capacity for the proposed road network to deal with evacuating residents and responding emergency services, based on the existing and proposed community profile;

It is particularly noted that PBP 2019 c4.1 states that “Strategic planning occurs at a state ... government level”, that “Strategic development proposals in bush fire prone areas require the preparation of a Strategic Bush Fire Study” and that “If the strategic issues cannot be resolved then the proposal cannot comply with PBP and will not be supported by the RFS.

In accordance with Table 4.2.1 the Bush Fire Strategic Study must assess “The capacity for the proposed road network to deal with evacuating residents and responding emergency services, based on the existing and proposed community profile”. A raft of other assessment considerations are listed.

Strategic development cannot be considered on a site by site basis. It is our understanding that no Strategic Bush Fire Study was undertaken by the NSW Government before it gazetted the TOD. Planning for Bush Fire Protection 2019 was enacted under the Rural Fires Act. We therefore question whether the decision-maker, the DPHI and/or the NSW Government, took into account the relevant strategic planning section of PBP2019 consideration when enacting the Diverse and Well-Located Homes program. We believe the decision not to do would not be supported by the Rural Fires Act.

It is noted that the Rural Fire Service (RFS) provided no input into the Inquiry with regard to bushfire constraints in areas impacted by the Diverse and Well-Located Homes program, or by the TOD. Furthermore, the only RFS evacuation advice we are aware of is incorporated into Bushfire Evacuation Risk Maps but that only applies to SEPP 5 in some LGAs and doesn't consider new density increases in other areas. While DPHI have indicated that it will consult with councils where there are bushfire evacuation concerns, nothing has been included in either the Diverse and Well-Located Homes program or the TOD SEPP that excludes these areas of concern.

Using the Hornsby Shire example, there are several shopping centres north of Mount Colah that meet the criteria for mid-rise housing 400m around their shopping centres, including Mt Ku-ring-gai and Berowra Heights. **The RFS has repeatedly expressed its concerns regarding medium density housing in these areas.** Similarly Westleigh has only one road in and out, yet that shopping centre meets the criteria for mid-rise housing within 400m. Ku-ring-gai LGA has more than one area included in its Bushfire Evacuation Risk Map, yet these areas are not excluded from the Diverse and Well-Located Homes program. **Appendix 4** contains relevant mapping for these KRG LGA sites.

RECOMMENDATION: The Inquiry reviews the probity measures with regard to the selection process for exclusion of some LGAs from the Diverse and Well-Located Homes program, yet other LGAs with bushfire evacuation risks were not excluded.

RECOMMENDATION: The Inquiry recommends that bushfire-prone LGAs that have identified bushfire evacuation risks, such as Hornsby and Ku-ring-gai LGAs, be excluded or partially excluded from the Diverse and Well-Located Homes program.

(c) The development of the Transport Oriented Development Program policy approach by the Government.

The Department of Planning, Housing and Infrastructure (DPHI) recently advised that “*The department will publicly monitor progress towards and delivery against housing targets*” and that “**Targets are for new homes completed**”. This is an unsatisfactory situation because councils have no control over what happens post-approval in the actual construction of new homes and therefore whether targets will be met because meeting the targets will be dependent on the development sector itself (labour, materials, finance, etc issues). Furthermore, councils have to plan new housing within the TOD SEPP which states in clause 155(2) “*The maximum building height for a residential flat building in a Transport Oriented Development Area is 22m*”. And yet it appears that council planning controls could be changed by the NSW Government where there is discrepancy and time lag between what is measured (homes approved) and what is achieved (homes completed).

There is already talk of the height controls being increased. It was reported in the SMH on June 1, “**New height limits and other planning controls designed to help NSW achieve its housing targets could be intensified if they fail to deliver enough new homes, the state’s planning boss has told development industry leaders**”. The DPHI Departmental Secretary, Kiersten Fishburn, stated that “*If the controls aren’t right, we will amend the controls*” to ensure targets are met. Is there procedural fairness in publishing controls that can ultimately fail to give certainty to local councils? Did the Government take into account whether the monitoring system would accurately gauge the implementation of the SEPP, to the extent that just four weeks after publication of the SEPP, DPHI was already suggesting that the height controls could be increased.

RECOMMENDATION: The Inquiry recommends that development approvals, rather than completions, are monitored against housing targets.

Furthermore, we question how DPHI will count the number of “new additional dwellings”. Where older stock of apartments or a boarding house within a TOD precinct are replaced by luxury rebuilds of fewer dwellings, there would be a net loss of housing. This would result in a reduction in the number of new additional dwellings. As these developments would be constructed under the Government's new TOD and Diverse and Well-Located Homes programs, it appears that they may reduce the count towards additional dwelling numbers.

The Cameron Murray / Tim Helm study, [The Auckland Myth](#) showed that Auckland's upzoning mostly led to the city giving mere “consent” to more houses. When demolitions were taken into account, significant net new dwellings didn't necessarily materialise.

Councils could be assessed by DPHI as lagging behind on their targets simply because it's more profitable for developers to build bigger luxury units to replace ageing 1940s to 1970s unit blocks.

While not in a TOD precinct, the recent story of 32 long-term residents being evicted from two Paddington boarding houses to facilitate the construction of just 4 luxury houses is a stark illustration of the potential for net loss of dwellings, to the detriment of the elderly and most vulnerable in society.

RECOMMENDATION: The Inquiry recommends that where development is being done under the TOD or Diverse and Well-Located Homes programs, there must be no net loss in the number of dwellings on the site.

RECOMMENDATION: The Inquiry recommends the total number of those replacement dwellings be counted towards a council's housing target, with no net loss in numbers of dwellings. This will ensure that no council is penalised for not meeting its targets simply because a developer uses the TOD or Diverse and Well-Located Homes programs when the developer is not providing additional new dwellings.

In addition, we believe that the making of the TOD SEPP was not authorised by the EP&A Act because the Minister for Planning and Public Spaces failed to comply with s3.30(1) of that Act. That section required, before the Minister recommended the making of the TOD SEPP by the Governor, that the Minister take such steps, if any, as he considered appropriate or necessary, to publicise an explanation of the intended effect of the proposed instrument and to seek and consider submissions from the public on the matter. We believe that non-compliance with s3.30(1) of the EP&A Act invalidates the TOD SEPP and the amendments that were thereby made to the Housing SEPP.

We also believe that the making of the TOD SEPP was not authorised by the EP&A Act because the Minister failed to comply with mandatory requirements of the community participation plan that applied to the Minister in respect of the preparation of state environmental planning policies under sections 2.22(2) and 2.22(3)(a) of the EP&A Act.

RECOMMENDATION: The Inquiry recommends that the TOD SEPP be repealed and that any new proposed amendments to the Housing SEPP be consistent with the EP&A Act.

(j) The enabling infrastructure capacity for every station selected or considered as part of the Transport Oriented Development Program.

While only 20% of the 37 TOD precincts have been discussed above, we believe that it can be seen from the information provided, together with the maps and satellite images attached in **Appendix 1**, that the enabling infrastructure cost for some of the TOD precincts would be astronomical. The proper remediation of the Cockle Creek station precinct alone would probably use a significant amount of the funds the NSW Government intends to provide for TOD infrastructure, and that amount is supposed to cover all precincts.

On the other hand, the Tuggerah station precinct has only 20 residential lots that meet the zoning criteria, raising questions regarding the economic feasibility of its potential infrastructure capacity.

In terms of the educational infrastructure capacity of Dapto, Corrimal and Booragul precincts, how will that education capacity be met if the Department permits TOD high rise housing on the school sites, as shown in the eSpatial Portal?

RECOMMENDATION: The Inquiry recommends that an independent review be undertaken of the enabling infrastructure capacity for every station selected, with particular regard to the rezoning of schools and other enabling infrastructure for residential TOD use.

RECOMMENDATION: The Inquiry recommends that an independent review be undertaken of selected stations such as Cockle Creek that appear to have little if any enabling infrastructure.

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

Given the extraordinary mega-bushfire risks faced by the Teralba and Booragul TOD precincts, how could the Government protect the proposed increase in the number of residents from a future firestorm?

The extent of tree and vegetation removal would have a significant impact on the localised environment. Will these precincts become tree-free zones with the subsequent heat island effect and increased cooling costs for homes?

Has consideration be given as to how it will be ensured that homes built on bushfire-prone land or within the firing line of mega-fires, will not become uneconomical to build and unaffordable to buy in these regional areas, because of the necessarily stringent bushfire construction regulations? And has there been any consideration of whether these homes could be unaffordable or impossible to insure?

If not carefully planned, it will reach a point where insurance companies refuse to insure properties that are at high risk of bushfire attack, or at the very least the insurance premiums will become unaffordable for the average family.

We think it is notable that the Rural Fire Service (RFS) made no written submission to this Inquiry. Given that several TOD precincts are on bushfire-prone land or are within range of a mega-blaze, and that large swathes of properties are in the same situation with the Diverse and Well-Located Homes program, we think the lack of a RFS submission to the Inquiry is concerning.

Several of TOD precincts are located within LGAs that contain a significant proportion of the last of the remnant critically endangered ecological communities, specifically the EPBC listed Blue Gum High Forest and Sydney Turpentine-ironbark Forest. In Ku-ring-gai LGA for instance, most of the remnants of these CEEC forests occur on private lands. Sadly both state and federal legislation provides no effective protection whatsoever for removal of CEECs on a site by site basis.

This is due to the current wording of legislation which fails to properly consider removal of areas of CEECs on small individual sites as having a “significant” impact on Commonwealth Matters of National Environmental Significance (MNES) or ecological communities at risk of Serious and Irreversible Impact (SAIL) at State level.

If sites that contain these two CEECs, the EPBC listed Blue Gum High Forest and Sydney Turpentine-Ironbark Forest are not excluded from the TOD, particularly in Ku-ring-gai LGA which contains the majority of the remainder of these two CEECs, then **the TOD will be responsible for taking the Blue Gum High Forest and Sydney Turpentine-Ironbark Forest to the brink of extinction.** There is no last step beyond critically endangered, by definition that means a species or ecological community is at imminent risk of extinction. The next step is EXTINCTION for the CEECs.

RECOMMENDATION: The Inquiry recommends that the RFS, in conjunction with the Climate Council, undertakes a review each of the TOD stations with regard to bushfire risk and in particular with regard to the risk of impact of a mega-blaze on each of the precincts.

RECOMMENDATION: The Inquiry recommends that the Government instigates an independent review by a panel of experts which includes the Insurance Council of Australia, into the potential insurance costs of homes built in relevant TOD precincts with regard to bushfire and/or flood risk.

RECOMMENDATION: The Inquiry recommends that all properties within TOD precincts and areas covered by the Diverse and Well-Located Homes program, that contain EPBC Act listed Matters of National Environmental Significance (MNES), be excluded from these programs, regardless of the size of the MNES.

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

The TOD includes Heritage Conservation Areas that contain homes that were designed and built by some of Australia's preeminent and award-winning architects. Many of these buildings are rare examples that are not replicated anywhere else in the world.

Below is a list of some of the architects that built in Kuring-gai LGA, including John Sulman, Walter Burley Griffin, Horbury Hunt, Hardy Wilson, Leslie Wilkinson and Glen Murcutt.

Note: This list is provided with the kind permission of Dr Zeny Edwards OAM, architectural historian. The views expressed in this submission are not necessarily the views of Dr Edwards.

John Sulman	Greenwell	John Brogan
Horbury Hunt	Walter Burley Griffin	Frederick Glynn Gilling
Howard Joseland	Hawdon	Wardell
Hardy Wilson	Kenworthy	George Sydney Jones
BJ Waterhouse	J Aubrey Kerr	Burcham Clamp
Glenn Murcutt	Laurie and Heath	Gordon McKinnon
Walter Liberty Vernon	WA Nelson	Peddle Thorp and Walker
Douglas Agnew	James Peddle	Espie Dods
Frank l'Anson Bloomfield	EC Pitt	Robertson and Marks
Colin Brewster	Ernest Ruwald	Shedden Adam
Bruce Dellit	Prevost	Joseph Porter Power
Finch	Rudder and Group	F. Glynn Gilling
Span and Cosh	JK Shirley	Walter Traill
Leith McCredie	Dudley Ward	Vernon and Mills
Augustus Aley	CR Winter	Catherine Forbes
Stafford Harman Buchanan	Hennessy and Hennessy	Lester Tropman
Samuel Lipson	John James	Castleton and Lake
Emil Sodesten	John Berrt	Gordon McKinnon and Sons
Pettit and Sevvitt	Stacey Neave	MB Halligan
William Ronald Richardson	Ellice Nosworth	John Harrington
Russell Jack	Barbara Cullis-Hill	SG Thorp
Barbara Cullis-Hill	James Muir	Herbert Wardell
Cyril Blacket	Aaron Bolot	Leslie Wilkinson
Arthur Baldwinson	Synnot	Bruce Rickard

While the chapter on Heritage in the DPHI *Guidance to Transport Oriented Development* excludes some Heritage items, it does not exclude Heritage Conservation Areas. The Guidance states that “*applications involving heritage considerations (will) continue to be lodged with and assessed by councils*”. We feel this is not a true or accurate reflection of the likely development application process with regard to heritage. While councils may initially assess a DA within a Heritage Conservation Area under the TOD, if a council refuses such a DA, any developer would immediately take that council to the Land and Environment Court to have the Court determine the matter.

The following wording of the Guidance virtually guarantees that any council would lose a LEC case on heritage grounds for a site that is within a TOD precinct - *“It is intended that the consent authority considers the character of the HCA and have regard to aim of increased housing density, and change in built form as the area transitions over time”*.

We feel it is unacceptable for the cost of protecting Heritage Conservation Areas to be shifted to residents in TOD affected precincts, whereby their councils will have to defend numerous individual LEC cases, paid out of residents rates. That is why heritage protections are enshrined in the EP&A Act and LEPs, so that residents are not burdened with outlandish court costs by developers with very deep pockets, on numerous developments. Councils (ie ratepayers) simply will not be able to afford the rash of LEC cases that will occur as a result of not excluding Heritage Conservation Areas.

RECOMMENDATION: The Inquiry recommends that Heritage Conservation Areas be excluded from the Transport Oriented Development SEPP and the Diverse and Well-Located Homes program.

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

It is noted that the Department of Planning, Housing and Infrastructure submission to this Inquiry, No. 118, dated 28 March 2024, includes a section on *“Consultation with peak bodies and non-government organisations”* which includes the statements *“DPHI's Planning System Stakeholder team coordinates monthly forums with stakeholders across various sectors”* and *“To provide ongoing opportunities for input regarding the TOD Program, DPHI has scheduled engagements with various groups, including (but not limited to): Better Planning Network”*.

We are a member group of the Better Planning Network (BPN) and some of our members attend DPHI Stakeholder monthly forums. Better Planning Network is not offered the opportunity to provide “input” into planning programs at these forums and certainly not input into the TOD. The short monthly forums consist of DPHI representatives providing information on a range of topics. Attendees are permitted to ask questions. While it is informative, it is NOT a forum where BPN or any of the other attending groups such as the National Trust or Nature Conservation Council is afforded the right to give “input” into the development of any of DPHI's programs, and certainly not the TOD.

After consultation with the other BPN forum attendees, we advise the Inquiry that to the best of our knowledge, contrary to DPHI's submission No. 118, **DPHI has NOT scheduled an engagement with Better Planning Network** with regards to the TOD, on the same basis or anything similar to the engagements DPHI states on page 18 of its submission, that it made with:

- Council General Manager Roundtable
- Local Government NSW
- NSW Aboriginal Land Council
- Planning Institute of Australia's
- Property Council Australia
- Urban Development Institute of Australia
- Urban Taskforce
- Sydney Yimby

There is certainly no “ongoing” opportunity for BPN to provide “input” into the TOD. We therefore question whether DPHI is continuing to meet with the developer lobby groups referenced in DPHI's list above, to allow them input into the TOD program.

We think it is unacceptable for DPHI to infer in its submission that any organisation that represents a number of community groups is being afforded the same input opportunities as developer lobby groups.

We also query why one community group, Sydney Yimby, whose stated goal includes “urban intensification”, is being offered opportunities for input into the TOD by DPHI that community advocacy organisations such as BPN are not being offered?

Better Planning Network has made several requests to DPHI over the past two years, that BPN be invited to provide input into discussions much earlier in the Department's planning processes, rather than just being advised towards the end of whatever work the Department is undertaking. We were advised last year that the Department would consider scheduling such meetings with their “Concierge”, who meets with other stakeholder groups such as the developer lobby groups, but this has not eventuated.

We would therefore like to correct the record of statements made by DPHI in its submission No. 118 – BPN has not been scheduled into any engagements with regard to providing “input” into the TOD.

RECOMMENDATION: The Inquiry notes that BPN was not invited to provide input into the TOD

- (e) ongoing opportunities for review and input by councils, joint regional organisations and communities, including consultations with renters, key workers and young people needing affordable housing in relation to the Transport Oriented Development Program State Environmental Planning Policy.

RECOMMENDATION: The Inquiry recommends that community organisations including, but not limited to, Better Planning Network, National Trust, Nature Conservation Council, Shelter NSW, Community Housing Industry Assoc, Homelessness NSW, be scheduled for future engagements regarding TOD reviews and input.

- (l) The existing or potential measures and programs analysed, considered or implemented by all NSW Government agencies to support additional housing density, including the housing series reports published by the NSW Productivity Commissioner.

We have seen no evidence that potential measures to minimise the impacts of bushfire risk were considered with regard to additional housing density. To the best of our knowledge there was no individual Strategic Bushfire Study done for each of the 37 TOD precincts nor the 8 accelerated precincts, let alone all 305 stations, nor for the Diverse and Well-Located Homes program. A Strategic Bushfire Study requires assessment of the bushfire issues that form part of the RFS *Planning for Bush Fire Protection 2019 Chapter 4 Strategic Planning*. *Planning for Bush Fire Protection 2019* is authorised by the *NSW Rural Fires Act 1997*.

We reiterate the following excerpt from *Planning for Bush Fire Protection 2019 Chapter 4 Strategic Planning*:

Strategic planning is the first stage in the planning process. It is needed to ensure that businesses and future development are not exposed to an unacceptable risk of bush fire.

The strategic planning phase includes state-level planning, regional planning, LEPs, DCPs and Masterplans or Precinct Plans.

We believe that the bushfire protection measures contained in the *Strategic Planning* section of *Planning for Bush Fire Protection 2019* may not have been adequately analysed, considered or implemented with regard to the Transport Oriented Development program or the Diverse and Well-Located Homes program.

RECOMMENDATION: The Inquiry recommends that an independent review of the Transport Oriented Development program and the Diverse and Well-Located Homes program be undertaken by the NSW Rural Fire Service in conjunction with the Climate Council, with regards to the Strategic Planning requirements of *Planning for Bush Fire Protection 2019*.

The Strategic Bushfire Study requires assessment of the following bushfire issues found in the RFS *Planning for Bush Fire Protection 2019 Chapter 4 Strategic Planning Table 4.2.1*:

ISSUE	DETAIL	ASSESSMENT CONSIDERATIONS
Bush fire landscape assessment	A bush fire landscape assessment considers the likelihood of a bush fire, its potential severity and intensity and the potential impact on life and property in the context of the broader surrounding landscape.	<ul style="list-style-type: none"> ➤ The bush fire hazard in the surrounding area, including: <ul style="list-style-type: none"> ➤ Vegetation ➤ Topography ➤ Weather ➤ The potential fire behaviour that might be generated based on the above; ➤ Any history of bush fire in the area; ➤ Potential fire runs into the site and the intensity of such fire runs; and ➤ The difficulty in accessing and suppressing a fire, the continuity of bush fire hazards or the fragmentation of landscape fuels and the complexity of the associated terrain.
Land use assessment	The land use assessment will identify the most appropriate locations within the masterplan area or site layout for the proposed land uses.	<ul style="list-style-type: none"> ➤ The risk profile of different areas of the development layout based on the above landscape study; ➤ The proposed land use zones and permitted uses; ➤ The most appropriate siting of different land uses based on risk profiles within the site (i.e. not locating development on ridge tops, SFPP development to be located in lower risk areas of the site); and ➤ The impact of the siting of these uses on APZ provision.
Access and egress	A study of the existing and proposed road networks both within and external to the masterplan area or site layout.	<ul style="list-style-type: none"> ➤ The capacity for the proposed road network to deal with evacuating residents and responding emergency services, based on the existing and proposed community profile; ➤ The location of key access routes and direction of travel; and ➤ The potential for development to be isolated in the event of a bush fire.
Emergency services	An assessment of the future impact of new development on emergency services.	<ul style="list-style-type: none"> ➤ Consideration of the increase in demand for emergency services responding to a bush fire emergency including the need for new stations/brigades; and ➤ Impact on the ability of emergency services to carry out fire suppression in a bush fire emergency.
Infrastructure	An assessment of the issues associated with infrastructure and utilities.	<ul style="list-style-type: none"> ➤ The ability of the reticulated water system to deal with a major bush fire event in terms of pressures, flows, and spacing of hydrants; and ➤ Life safety issues associated with fire and proximity to high voltage power lines, natural gas supply lines etc.
Adjoining land	The impact of new development on adjoining landowners and their ability to undertake bush fire management.	<ul style="list-style-type: none"> ➤ Consideration of the implications of a change in land use on adjoining land including increased pressure on BPMs through the implementation of Bush Fire Management Plans.

RECOMMENDATION: The Inquiry recommends that a Strategic Bushfire Study be undertaken by an independent panel of experts that considers all of the above issues, for each of the TOD precincts and accelerated precincts that are within proximity of bushfire-prone land or potential fire runs.

RECOMMENDATION: The Inquiry recommends that “if the strategic issues cannot be resolved” for any precinct, then it be deemed that the NSW RFS does not support the inclusion of that precinct within the TOD program.

RECOMMENDATION: That the Inquiry investigates whether the NSW Rural Fire Service oversaw any Strategic Bushfire Study, or any other type of study, to support the inclusion of each TOD precinct and accelerated precinct in the program. If the RFS did not do so, the reasons why the Government did not ensure this occurred.

(r) Any other related matters.

There is a plethora of research, amply provided in other community submissions, that belies the developer-supported mantra of increasing supply. To add to those submissions, the information below was provided by Matt Grudnott, Senior Economist, Australia Institute, in his recent podcast:

<https://australiainstitute.org.au/post/australia-wastes-billions-making-housing-more-expensive>

Mr Grudnott provides the following statistics:

- In the past 10 years population has increased 15%
- In the past 10 years housing supply has increased 19%
- In the past 10 years housing prices have increased 80%

Therefore increasing supply is not the only part of the solution to affordable housing. Just adding supply is not going to make housing more affordable.

CONCLUSIONS:

We hold significant concerns that:

- The selection criteria for some of the Transport Oriented Development precincts has not been met. This applies particularly to existing zoning (submission pages 3 & 4).
- We believe that MU1 zoning is not an equivalent zoning to the TOD criteria of existing E1 & E2 zones or R1, R2, R3 & R4 zones (submission page 3).
- Sufficient consideration has not been given to environmental issues, particularly contamination, for some of the TOD precincts (submission pages 5, 6 & 7).
- Sufficient consideration has not been given to bushfire and/or evacuation hazards for some of the TOD precincts. Properties on bushfire-prone land should be excluded from the TOD (submission pages 7 & 8).
- We believe that a Strategic Bush Fire Study ought to have been undertaken in accordance with the strategic planning requirements of the RFS *Planning For Bushfire Protection 2019*, as enacted under the Rural Fires Act, prior to gazetting the Transport Oriented Development and Diverse and Well-Located Homes programs (submission pages 9, 10, 11, 16 & 17).
- Housing approvals rather than housing completions should be used to assess whether housing targets are being met by councils (submission pages 11 & 12).
- Properties within TOD precincts and areas covered by the Diverse and Well-Located Homes program, that contain EPBC Act listed Matters of National Environmental Significance (MNES), should be excluded from these programs, regardless of the size of the MNES (pages 13 & 14).
- There are insufficient protections afforded to Heritage Conservation Areas within the precincts. HCAs should be excluded from the TOD & LMR programs (pages 14 & 15).
- DPHI did not undertake the public consultation required under the EP&A Act before the TOD SEPP was gazetted and therefore the SEPP should be repealed (page 12).

Without prejudice: we wish to make clear that any and all statements made in this submission in no way suggests or infers that any person, business or organisation has done or intends to do anything untoward or illegal.

Authorised by J. Green
President
STEP Inc.