

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 7 - PLANNING AND
ENVIRONMENT**

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

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At Macquarie Room, Parliament House, Sydney on Wednesday 24 July 2024

The Committee met at 9:05 am

PRESENT

Ms Sue Higginson (Chair)
The Hon. Anthony D'Adam
The Hon. Scott Farlow
The Hon. Jacqui Munro
The Hon. Peter Primrose
The Hon. John Ruddick (Deputy Chair)

PRESENT VIA VIDEOCONFERENCE

The Hon. Bob Nanva

The CHAIR: Welcome to the third hearing of the Committee's inquiry into the development of the Transport Oriented Development Program. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

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Ms KIERSTEN FISHBURN, Secretary, Department of Planning, Housing and Infrastructure, affirmed and examined

Ms MONICA GIBSON, Deputy Secretary, Planning, Land Use Strategy, Housing and Infrastructure, Department of Planning, Housing and Infrastructure, affirmed and examined

Ms HANNA SHALBAF, Acting Executive Director, Governance and Insights, Planning, Land Use Strategy, Housing and Infrastructure, Department of Planning, Housing and Infrastructure, affirmed and examined

Ms ANTHEA SARGEANT, Executive Director, State Rezoning, Planning, Land Use Strategy, Housing and Infrastructure, Department of Planning, Housing and Infrastructure, affirmed and examined

The CHAIR: Welcome and thank you for giving the time to come today and give evidence. Would you like to start by making a short opening statement?

KIERSTEN FISHBURN: Yes. Thank you very much, Chair. We would appreciate that. The Department of Planning, Housing and Infrastructure welcomes the opportunity to be involved in this inquiry. I also note that the Government has made a submission to this inquiry, which I'm sure you've all received. The submission talks to the New South Wales Government's commitment to the National Housing Accord. The National Housing Accord is an initiative between the Commonwealth, States and Territories, local government, institutional investors, and the construction sector to address the current housing crisis. Under the National Housing Accord, the New South Wales Government has committed to delivering New South Wales' share of the Commonwealth's 1.2 million new, well-located homes target. New South Wales' share of this target is 377,000 new dwellings, to be delivered over five years from July 2024 to June 2029.

The housing crisis is evident in New South Wales. New South Wales not only has the largest population but the largest expected increase in population, highest rents and highest median house prices out of all the States and Territories. Additionally, there has been uneven housing growth in Sydney and there is a shortage of new homes in many areas east of Parramatta. The NSW Productivity Commission's *Building more homes where people want to live* report states that, between 2016 and 2021, fewer than 20 per cent of new homes were built within the 10 kilometres surrounding the Sydney CBD, resulting in urban sprawl and increasing infrastructure and servicing costs.

The New South Wales Government made several commitments at the 2023 election related to housing and planning reforms, particularly rebalancing population growth around infrastructure, amending existing development plans around metro stations and streamlining the planning system. The Transport Oriented Development Program—we'll use the phrase "TOD" for ease moving forward—is part of the Government's implementation of these commitments and is a direct response to addressing the New South Wales housing crisis. Transport oriented development as a planning concept is not a new idea. It's been successfully rolled out in many cities around the world. Singapore to Stockholm have demonstrated that increasing development capacity for mid-rise housing around transport hubs can create a mix of housing types and transportation choices; promote active transport, like cycling and walking; and increase healthier lifestyles.

The planning system has a critical role in delivering housing of all types across New South Wales. Delivery of housing relies on both councils and the State Government to set planning controls that respond to current and future market conditions and ensure that planning controls are fit for purpose. New South Wales has an obligation to house its growing population. Everyone deserves a place to live. Housing choice and diversity is critical to meeting the variety of housing needs within our communities. Based on expected completions, we won't meet this number if we don't make changes to policy and processes.

The Government's submission provides further information about how the newly adopted TOD planning controls in the housing SEPP will work to address the unprecedented housing crisis facing New South Wales. It also identifies how we selected the 37 stations; how we landed on certain development controls, particularly affordable housing; and the probity measures we undertook to ensure a rigorous and transparent process throughout. The process for station selection, which is further detailed in the submission, was undertaken with the help of other government agencies, including Transport for NSW and Sydney Water, who I understand are appearing later today.

We looked at 305 stations across the electrified metro, heavy rail and intercity networks across Greater Sydney, the Central Coast, Illawarra Shoalhaven and Greater Newcastle, and we focused on locations which had existing water, transport and other infrastructure capacity to support additional growth. Developing the planning controls for the TOD locations involved urban design analysis, land-use forecasting and feasibility analysis of six-storey mid-rise housing developments. Each local council that has a TOD location was thoroughly consulted with. This included multiple briefings with councillors, general managers and key planning staff. Initial

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feedback during these briefings and formal submissions from councils and other key stakeholders was used to inform the final planning controls, which have now been published on the NSW Legislation website.

Throughout the site selection process the department had various probity measures in place, including a probity advisor, conflict of interest declarations, document management and storage, and information sharing on an as-needed basis only, within and outside the department. We have learnt from events which occurred during the processes and have taken steps to enhance record management practices and probity measures. We have also cast a wider review of our practices. A number of recommendations have been implemented and will continue to be ongoing. I want to thank the councils that worked with us on the preparation of the TOD planning controls, in particular the councils who recommended additional stations for inclusion in the program.

There is just one final matter I wanted to cover. As has been widely reported, Ku-ring-gai Council has brought a current court action against the Government in the Land and Environment Court challenging the validity of the legal instrument that has given effect to the Government's TOD policy. Consistent with the sub judice convention to avoid statements that might interfere with the course of justice or involve current legal proceedings, we request that the Committee not ask questions relating to the proceedings, and foreshadow that departmental witnesses may be unable to answer specific questions if they have concerns that they might prejudice this ongoing court process. I'm sure you'll appreciate the need for that. Thank you for having us. We look forward to answering your questions.

The CHAIR: We've got a few questions. I just want to start with one, if that's okay, and then I'll hand over to my colleagues. With the refinement work, or I think it was referred to as, and you've perhaps alluded to, the improvements, are we likely to see more publication from the department or the Minister around further refinements between now and, say, the end of the year?

KIERSTEN FISHBURN: In relation to the TOD program itself?

The CHAIR: Yes.

KIERSTEN FISHBURN: As you will be aware, there are a number of councils that requested and were given further time to undertake their work. That is a refinement process in and of itself, and they will be rolled out as the councils are able to undertake that work.

The CHAIR: I suppose I'm just trying to ascertain whether there is a commitment to that being a public process. Will those refinements per LGA or council area be rolled out and made clear to all?

KIERSTEN FISHBURN: The councils are working through that process now, so they will undertake the consultation that they deem appropriate to develop their own plans for their own LEPs.

MONICA GIBSON: We have some guidance that we are preparing to provide each of the councils that are working through a TOD location that has been deferred until later this year or early into next year, and that includes some guidance around their community consultation requirements, matters for investigation and what the process would be for bringing that plan into the SEPP.

The Hon. SCOTT FARLOW: Good morning to all of you. Thank you for being here today and thank you for your submission. At this stage, how many applications have been received within the TOD SEPP areas for any additional dwellings?

KIERSTEN FISHBURN: I would have to take that on notice and get back to you about that. It would be a limited number at this point in time, Mr Farlow, due to the fact that some of the TODs have not actually been made at this point in time and it takes a while for industry to respond, but we'll get you that detail.

The Hon. SCOTT FARLOW: Thank you very much. In terms of the TOD tier 2 program, what is your expectation of dwellings within the housing accord period?

KIERSTEN FISHBURN: Ms Gibson, can you—

MONICA GIBSON: We've outlined some estimates of what the number of dwellings would be in the housing accord period, and I might check with Ms Shalbaf if she's got that number to hand. Part of the TOD program is a plan to bring forward more homes during the period of the accord from what we were forecasting would normally have happened without the reforms taking place. But it is also a program that looks to a 10, 15 and maybe 20-year horizon in some situations. So the information that we presented with the TOD program late last year and through this year has mostly spoken about the capacity or the potential for the homes over that 10, 15, 20-year period. The number was 16,000 homes from the—

The Hon. SCOTT FARLOW: It's 16,000 within the accord period?

MONICA GIBSON: Yes, 16,000 during the period of the accord.

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The Hon. SCOTT FARLOW: That takes into account now the additional stations and also the delay that has occurred in some of those TOD precincts as well.

MONICA GIBSON: Yes, we forecast the additional potential homes incorporating the additional sites that were included by councils and the timing of those.

The Hon. SCOTT FARLOW: Would you be able to provide a breakdown per TOD location as to how you've arrived at that figure? On notice, of course—I don't expect you to go through the figures today, but is that something that you can provide on notice?

MONICA GIBSON: We'll have a look at what we can provide on notice. Some of the feasibility and more detailed analysis for each of the TODs has been held as Cabinet-in-confidence information so I would just need to check the level of detail that we can provide for each of the TODs. We'll take that on notice and provide the information that we can.

The Hon. SCOTT FARLOW: Why has that been held as Cabinet in confidence? You're able to provide the global figure. Why does that change when it comes to the local or the precinct level?

MONICA GIBSON: There's some information that has been presented to government about a range of different factors about development feasibility and about infrastructure servicing that is sensitive to government, so that has been presented only in a Cabinet setting at this stage.

The Hon. SCOTT FARLOW: That may be the case in terms of the inputs, but in terms of the output that shouldn't necessarily be something which is either commercial in confidence or sensitive to Cabinet.

KIERSTEN FISHBURN: As you're aware, Mr Farlow, these were matters that were taken through Cabinet so at the moment they are protected by Cabinet in confidence.

The Hon. SCOTT FARLOW: Just turning to the assessment criteria that was in place with respect to the TOD locations—and thank you for outlining them in your submission and for publishing them as well—one of the original ones was with respect to two per local government area. I note that in some of the briefings provided under the Standing Order 52, there was a noted exception when it came to Canterbury Bankstown and reasons for that. There are of course some that have many more than two in the local government area. When was it determined that that would not be the criteria?

HANNA SHALBAF: The criteria that you're referring to, which is around balanced growth, referred to the TOD-accelerated precincts. In identifying the precincts in the accelerated precincts, we went through a number of different stages. That prioritisation process included wanting to achieve balanced growth. In relation to the TOD SEPP, where you will see that there are more in some LGAs, the process for selecting those stations was initially the eligibility criteria and then that detailed the planning and infrastructure advice.

MONICA GIBSON: I might also add that councils also offered to bring forward more TOD tier 2 locations. For example, Lake Macquarie City Council and Central Coast Council both offered additional TOD tier 2 locations that added to their number.

The Hon. ANTHONY D'ADAM: Are you able to elaborate on the eligibility criteria that was applied to select the stations?

KIERSTEN FISHBURN: Yes. Ms Shalhaf, can you talk through that? Essentially, there is a hierarchy of what we looked at in terms of how the stations were selected.

HANNA SHALBAF: Yes, absolutely. The assessment was undertaken over a number of different stages. As you're aware, we reviewed 305 heavy rail, metro and intercity stations. To identify and select the stations in the accelerated precincts, the first stage was that eligibility criteria. We were looking for those stations that are well located—in this case, within 30 minutes on the train line to a metropolitan centre, being Sydney, Parramatta, Wollongong, Newcastle and Gosford, enabling good access to jobs and services—and that also have capacity for additional homes near the transport station and also capacity on the Sydney train network to support additional growth, and where there was also existing residential land near that station.

The next stage was that prioritisation process that I spoke about. That was assessing and ranking the shortlist of stations, initially looking for strategic alignment to a government strategy—for example, a local housing strategy or a regional plan—the planning status—and by that I mean the status and timing of a master plan or a rezoning—the percentage of fragmentation, the proportion of government-owned land and then ensuring that there was that balanced growth across the State. That shortlist of stations then underwent further analysis, which is more detailed planning, infrastructure and advice from different infrastructure agencies including Sydney Water and some more detailed advice from Sydney transport as well, as well as a review of the open space needs. As I mentioned, in relation to the TOD SEPP, it went through that same eligibility criteria and that more detailed

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planning and infrastructure analysis, including transport, water and open space, and some modelling done on the housing potential.

The Hon. SCOTT FARLOW: There obviously was some consideration given to heritage and we see from the Standing Order 52 documents that there was significant consideration that you attributed to heritage within locations. For instance, heritage conservation areas were a key consideration of the department. Did the department at one stage take heritage constraints into consideration when determining the tier 2 sites?

KIERSTEN FISHBURN: Ms Gibson?

MONICA GIBSON: Yes, absolutely. The identification of heritage items and heritage conservation areas were looked at as we were planning for not just the selection of sites but also as we were looking at the provision that we were proposing in the SEPP in terms of heights, floor space ratios et cetera.

The Hon. SCOTT FARLOW: With respect to that, was it at one stage considered that the TOD SEPP wouldn't apply in heritage conservation areas?

MONICA GIBSON: The TOD SEPP does apply in there—

The Hon. SCOTT FARLOW: I know that it does, but was it at one stage considered that it wouldn't?

MONICA GIBSON: We considered lots of different things as we prepared for the SEPP and what land might be covered and not covered. I am sure in one of our scenarios that we looked at and how we were planning for the SEPP that we considered an option where it didn't apply.

The Hon. SCOTT FARLOW: When was it determined that the TOD SEPP would apply in heritage conservation areas?

MONICA GIBSON: You can see from the making of the SEPP that it does apply to the heritage conservation areas.

The Hon. SCOTT FARLOW: But when was that determination made?

MONICA GIBSON: I don't know that we would have a document that has included that information about where that scenario was changed. We did consult on our proposals for the SEPP and how heritage listings might apply in the policy during December, January, February and March this year.

KIERSTEN FISHBURN: And that includes consultation with the Heritage Council as well.

The Hon. SCOTT FARLOW: With respect to the meeting minutes provided under Standing Order 52 with respect to the plush north district on 16 October 2023—and I note in terms of its consideration of stations, Killara, which on your assessments is a station with 83.55 per cent heritage. The notes on there are, "Heritage conservation. Put it up, noting the risk, and leave it as a political decision." Was this a political decision—that it applies to heritage?

MONICA GIBSON: I think that that's a question that I would need to take on notice to get advice from the Minister.

The Hon. SCOTT FARLOW: With respect, I think that we have heard throughout the inquiry from both councils, from advocates in terms of protecting heritage and from the developer lobby themselves as well that there is a lot of confusion as to how this will apply in heritage conservation areas. Could you outline for the Committee what will be the application in heritage conservation areas? Do we expect to see a significant number of homes that are in heritage conservation areas removed for six-storey apartment blocks?

MONICA GIBSON: We've published some additional guidance to support the TOD SEPP, and that guidance also talks to the specifics, the heritage matters. As we have described in the SEPP and made clear in those documents, heritage conservation areas are included and captured by the TOD SEPP but heritage items are not. We have also made it clear that the local planning controls—so councils, LEP, councils' heritage provisions in their LEP and councils' development controls for heritage conservation areas—will continue to apply.

Councils have, for many years, assessed local development applications in heritage conservation areas that have seen the redevelopment of sites and that have seen the conservation of heritage values. So it's a longstanding relationship that heritage and housing can coexist and do coexist. It will be individual decisions, and each heritage conservation area has its own reasons for being listed. Council will take those considerations into account when they're making development decisions on the applications presented to them. There are some heritage conservation areas where the built form and the housing type is already multi-unit, multi-level, multi-storey taller buildings. There are some situations where it's not.

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The Hon. SCOTT FARLOW: A garden suburb, for instance, where it's not—somewhere like the Malvern estate, for instance.

MONICA GIBSON: That's right. Council have their local planning controls for a place like Malvern estate in Croydon. Council are best placed to be able to make those development assessment decisions for those areas. So their planning controls remain in place.

The Hon. SCOTT FARLOW: To that point, Burwood Council makes the determination that in the Malvern estate they will knock back a six-storey apartment block because it is a heritage conservation area. The developer says, "No, there's a TOD SEPP that applies. I'm taking this to the Land and Environment Court." Isn't it going to be the case that the courts are going to determine whether heritage applies here or not?

MONICA GIBSON: I think that would be a matter for the court, and it would be presumptuous of me to suggest what the court would do in that situation. It will also be very specific to the application that is made—the site that is chosen, the proposal that is put together. They would be matters that we would really be making a hypothetical judgement on.

The CHAIR: Could I elaborate on that, though? Is it your understanding of the instruments that you have designed and developed and now have been introduced that the State environmental planning controls will override the local controls when it comes to a heritage conservation area in a decision about a development? I think that's the rub. Even if there is a challenge, which there no doubt will be at some point in the future—yes, that's hypothetical—as the makers and the drafters of this SEPP and the intended impact, is it your intention that it will override the local conservation heritage area?

MONICA GIBSON: It does not change the local heritage conservation area listing. The SEPP does change the height where the height in the SEPP is higher than what council already had in their local environmental plan, and that's not always the case. In some situations it is the case that the SEPP now has higher heights and larger floor space ratios, so those controls may have changed. But there is no change to the heritage conservation area listing. The heritage conservation area provisions in the LEP and the heritage conservation assessment requirements in a council DCP—all of those things stay in place.

The CHAIR: Except for where something conflicts and then it will be overridden by the State planning control.

KIERSTEN FISHBURN: No. The council remains the consent authority. As Ms Gibson has outlined, councils have been dealing with development in heritage conservation areas for many decades. Their controls do change, as Ms Gibson has outlined, but councils will be able to continue to make assessments, as they always have done, about appropriateness against their own LEP controls and their own DCP controls as well.

The Hon. ANTHONY D'ADAM: That's not the question, though, is it. The question is about whether the Land and Environment Court will make an assessment if the applicant appeals and what your view is of what the Land and Environment Court will decide when it has to make that assessment about the two competing—

KIERSTEN FISHBURN: I think we would be making a hypothetical assessment on what the Land and Environment Court will consider.

The Hon. ANTHONY D'ADAM: Obviously, there is a lot of anxiety about this issue. That is why we're looking to the department to allay that anxiety with a clear answer about this question.

The CHAIR: And, let's be clear, you will instruct lawyers about what the intention of your instruments are. That's how it works.

MONICA GIBSON: The matters that would be considered in the assessment—for example, in a situation where the height controls are higher in the SEPP than they are in the council LEP and a proponent makes an application using that new height—that would need to be assessed about impact on heritage values and the heritage conservation area would continue to apply. They are council's controls. They are set up in an LEP—that those matters need to be considered with a statement of heritage impact. Where the impacts are significant on those heritage values, they are certainly merits-based matters that council would consider and a consent authority like the court would also consider.

The fact that a height, in itself, might exist does not override or replace the need for the merits assessment on the implications of that height, be it overshadowing, be it privacy issues, or be it matters that affect the heritage values of that area. Be it heritage or be it other matters that change in planning controls over time, they all need to be contemplated in a merits-base assessment. So it is not an unusual thing for a council to be assessing a development application, looking at a State environmental planning policy that might relate to another housing

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issue like affordable housing or that might relate to some of their own controls that have different outcomes, and they make merits-based assessments as their regular process of assessing applications.

The CHAIR: Some of those local governments and councils have raised a concern, and it's implied in a number of concerns that, over the years, heritage items have not been listed as heritage items because they have understood there is the protection of the heritage conservation area. That was, for better or worse, a directed and intended pathway for some councils—Waverley, Woollahra and other council areas, not quite in the TOD exactly. But those heritage conservation areas—

The Hon. SCOTT FARLOW: Low- and mid-rise.

The CHAIR: Yes—would be the best way to maintain and connect and keep those values in those local areas. Because of that recommendation from certain inquiries, going back as far as Bunning and others, those items weren't listed because there was always this legitimate expectation that, under planning law, they would maintain that protection. I think there is a real concern now that they should have done a different pathway and protected items under the heritage register, as opposed to relying on these conservation areas, because now I'm hearing, and I think everybody else can hear, that those controls will ultimately be overridden if the contest of conflict is height and density that will conflict with the essence of the heritage conservation significance. Are those councils left out there? Should they have listed these things under the State heritage register? Is this something that you will be able to consider going forward? Is there something that those councils can do to retrofit the heritage protection for some of those areas?

KIERSTEN FISHBURN: If I can pick up a few comments there, firstly, councils are very good at doing assessment. They're very good at doing merit assessment, and I don't want to underestimate the ability of councils to negotiate heritage conservation areas with also some density and some development. This has occurred for many decades, and I feel very confident that the councils that have TOD areas will continue to be able to make really strong and firm merit assessment. Let's not undervalue the capacity of councils to do that work. They have been doing it for a long time.

In relation to heritage listing and heritage conservation areas, they are two discreet things. Councils still can list heritage items and, as Ms Gibson has detailed, heritage-listed items are exempt from the TOD SEP. So if there is a particular building in their area or a vista that they wish to list, they can go through that process. There's nothing to preclude them from doing that in the future. In relation to whether they should have made the decisions to do more broad heritage listing, that's going back into history. I don't think councils have deliberately done heritage conservation areas to prevent development. They've done it so that they have that ability to do the merit assessment so that they can build into their LEP and into their DCP those considerations into the future, and I can't see that changing.

MONICA GIBSON: I know that you have some other witnesses in front of the inquiry today and some councils. There are some excellent examples of being able to assess and plan for more housing and redevelopment, and for housing or adaptive reuse of existing buildings, heritage items or buildings in heritage conservation areas for housing, in their work. I think the City of Sydney is a real exemplar when it comes to that and how they have worked very carefully with proponents, with landowners, with heritage experts, with planning experts and with communities to identify those values and to be assessing, determining and approving applications for adaptive reuse for heritage of heritage items and in heritage conservation areas, with more residential development.

The Hon. SCOTT FARLOW: But, Ms Gibson, there's a big difference between adaptive reuse of terraces in the City of Sydney and a garden suburb or workers' cottages in Teralba and the like. They're not open to the same sort of adaptive reuse as there would be for a terrace in Sydney or what was a small mid-rise building in Sydney.

MONICA GIBSON: Yes. I was speaking broadly because a number of the heritage conservation areas in the TODs are in places like the inner city. But where they are in places that aren't the inner city and in the greater Newcastle area or whether they be on the North Shore or if they are in places like Croydon, those councils there have also made very good assessments of suitable development to demolish buildings and approve new buildings where they add to the heritage value, to allow for extensions of buildings to change over time. There's no reason why any of that changes because of the TOD SEPP. I don't want to characterise the TOD SEPP as overruling all local controls. It only changes on height and FSR, and some other lot size changes. The vast majority of the local planning controls remain as the major and predominant local planning control. We are not changing or turning off any development control plans that councils have specifically for heritage conservation areas. They all remain as the planning control for those areas.

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The CHAIR: I think the Committee appreciates and understands that. We're examining the pointy edges of it, and that's what we're rightfully here doing because that's where the pain happens in the community and the built environment. I get that.

KIERSTEN FISHBURN: Thank you, Chair. We appreciate that.

The CHAIR: Clause 155 (5) of the TOD SEPP allows greater maximum building height if it's permitted by another planning instrument. The housing SEPP from December 2023 introduced the new provision allowing for height increases up to 30 per cent where a proposal includes that a minimum of 15 per cent of the gross floor area is affordable housing.

KIERSTEN FISHBURN: Correct.

The CHAIR: For a TOD-accelerated precinct such as Hornsby, which, in part, allows towers up to the 40 storeys, would that mean that we could then, potentially, be looking at those towers actually ending up at 52 storeys? Is that how that will apply cumulatively?

MONICA GIBSON: No, it won't. We are currently on exhibition and in those exhibition documents for the accelerated precincts in Hornsby, and with a policy document that is also being exhibited concurrently with it, we have explicitly said that the in-fill affordable housing bonus is not to apply in the accelerated precincts. That's as we have exhibited those documents.

The CHAIR: But where does that apply?

MONICA GIBSON: For the accelerated precincts.

The CHAIR: But in law or in policy, where would that present? Will it be written expressly in the TOD SEPP or will it be written expressly in the housing SEPP, or is it this other explanation document? Because we know they're not enforceable.

MONICA GIBSON: We're on exhibition at the moment. When we finish and write the planning controls, they'll be written into those new planning control documents. That's likely to be the housing SEPP, where that will be very clear.

The CHAIR: So there will be an express provision in the housing SEPP that says, "This doesn't apply in these circumstances"?

MONICA GIBSON: That's as we've exhibited it. We are inviting submissions, so we will need to consider the submissions that come through. As we exhibit it, we're being very clear that it doesn't apply and our intention would be to make that into the housing SEPP. We will look at submissions when they come through. If communities, councils and landowners suggest that that provision needs to be reconsidered, like any matter that might come in a submission, we'll have a look at that.

The Hon. SCOTT FARLOW: Further to that, within the tier 1 projects you've got the precinct and then there are areas that have been accelerated or rezoned. For instance, I'll pick out where I grew up in Strathfield. You've got certain areas that have been picked up on the eastern side of Leicester Avenue—the street I grew up on—which have been rezoned, but the ones where I grew up on, on the western side of the street, have not been. Would those ones on the western side that have not been rezoned as a result of this tier 1 program be excluded from the affordable housing provisions?

KIERSTEN FISHBURN: Mr Farlow, can I just stress that nothing has been rezoned at this point. We are currently on exhibition.

The Hon. SCOTT FARLOW: Okay, but suggested for rezoning or identified for rezoning.

KIERSTEN FISHBURN: If you'd like to make a suggestion for Strathfield, feel free.

The Hon. SCOTT FARLOW: No. These are questions that are coming from developers as well, because you say "precinct", but then what is the definition of a precinct? Is the definition those items that you have determined or identified for potential rezoning at the end of this program or is it the entire area?

MONICA GIBSON: No, it's the map as we've included in the exhibition document, so we've been very clear.

The Hon. SCOTT FARLOW: So those areas that have not been identified for rezoning will still be captured by not being able to have the affordable in-fill SEPP apply to them.

KIERSTEN FISHBURN: No. I want to stress again that we're on exhibition. The maps that you can see in the EIE are the ones that will be potentially rezoned as the accelerated precincts, pending the outcome of

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the exhibition. The areas that are not part of that mapping exercise, the provisions, the affordable bonus, could still be applicable in those areas.

The Hon. SCOTT FARLOW: Again, in those precincts, if the area is not identified for rezoning, will it be captured by the affordable housing provisions?

MONICA GIBSON: Where it's consistent with the affordable housing provision.

The Hon. SCOTT FARLOW: And that is in terms of the 15 per cent as it may apply, or 5 per cent—they would be captured?

KIERSTEN FISHBURN: No.

MONICA GIBSON: No. There are a few things going on there, and let me see if I can try to explain. In the accelerated precincts, we have drawn a boundary and we have said, "This is where planning control changes would be applying." That boundary includes where heights—floor space ratios would change. It includes the area where we're proposing for a new affordable housing provision to apply, and the in-fill affordable housing bonus would be turned off. We're very clear in the detail of those exhibited documents where that boundary is.

The Hon. SCOTT FARLOW: You're clear in terms of "this is the precinct boundary", but then you have the thatched boundary, so to speak. So let's say the Kellyville-Bella Vista one, you've got a precinct boundary, which goes around the site, and then you've got the purple thatched area around Glenwood, Stanhope Gardens and some areas of Kellyville and Bella Vista. I guess the question I'm asking is does it apply in the precinct boundary or does it apply in those thatched areas only?

ANTHEA SARGEANT: The EIE that's on exhibition at the moment indicates that the purple thatched area is the area that is proposed to be rezoned, so that is where it will apply.

The Hon. SCOTT FARLOW: Yes, but in terms of where this applies, and you talk about the precinct, and that is the precinct boundary, does it apply across all the precinct or only in the thatched purple areas?

ANTHEA SARGEANT: Only in the thatched area. That broader precinct was our investigation area.

The Hon. PETER PRIMROSE: I sought to ask a question previously but it was exactly the same one that we were all going to ask, so I think that shows that we're all interested in similar things. Can I ask you—you'd be aware that there's a motion before the Legislative Council to actually disallow the TOD SEPP.

The Hon. SCOTT FARLOW: It's actually a bill.

The Hon. PETER PRIMROSE: A bill, okay. Well, it's still a motion. There is a motion before the Parliament to disallow it. Without dragging you into the politics of it, can you maybe just outline what would be the implications for the Planning system if that was successful?

KIERSTEN FISHBURN: I'll ask Ms Gibson to speak to the Planning detail, but I do appreciate that we're not able to make political comments, so I want to be very cautious about how we answer that question. Ms Gibson, if you can talk through the Planning matters in relation to that?

MONICA GIBSON: Yes, sure. We would be a little bit concerned about the uncertainty that would be created if the bill passed. The uncertainty would mean, for things like the TOD SEPP, that proponents might be shy for making applications and bringing forward housing proposals because the controls are known and established. There would be quite a range—it would be quite unusual. I guess, that's for starters: It's an unusual thing that would happen. We understand that there has previously been a parliamentary inquiry into this possibility, and they recommended that SEPPs shouldn't be subject to disallowance because it would set an undesirable precedent. Undermining uncertainty in the Planning system I think was also part of their consideration when the parliamentary inquiry presented their report.

The types of things for the housing accord and the work that we've done in Planning and identifying how many homes might be built during the period of the accord is predicated on a number of reforms coming into place at certain times and proponents having confidence about those reforms coming in so that they can make applications, and so that they can seek finance to deliver those developments and build those homes for more of the community in New South Wales.

KIERSTEN FISHBURN: Can I just add, to really stress—the certainty piece is very critical in the planning system. Developers need to understand where infrastructure will be delivered or where it is already available so that they can make those type of investment decisions. We don't take lightly, in the planning department, responsibility in our role to deliver housing for people of New South Wales. We are aware that it is an absolutely acute crisis and every day where we're not delivering planning outcomes is a day where people are unable to get into homes. So that certainty, that ability, for developers to make decisions about where they will

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develop and where they will invest is absolutely critical. We are in a time-constrained environment and we are in an environment where, rapidly, more people are struggling to get into the housing market.

The Hon. SCOTT FARLOW: With that being the case, why were 18 sites deferred, then?

KIERSTEN FISHBURN: We have a range of strategies that are being brought into play over time. In relation to those 18 sites, working with the relevant council areas—they had already done significant work themselves and they wanted more time to undertake their own local planning. However, what I should stress is those 18 sites have been made public so the development industry knows that those 18 sites will be coming on to line, while the SEPP will not be made for some of them until a number of months into the future now. Nonetheless, the development industry knows that those sites are available. I understand that the development community have been speaking to those councils so that they've got that early insight into what's becoming available.

The Hon. SCOTT FARLOW: Just with respect to that deferral, how will that be enacted? Will that be an amendment to the SEPP provisions or will that be through a planning proposal? What will councils be doing in those areas where they've had that deferral?

MONICA GIBSON: We are planning to make amendments to the SEPP to bring those maps and the work of councils into the SEPP. Each situation might be different for each council on the level of the mapping and the work that's prepared, so we're working closely with each council. We have the first of the sites coming through in July.

The Hon. SCOTT FARLOW: With respect, today the member for Riverstone, Warren Kirby—always happy to help our Labor colleagues—has asked for an extension of the deadline in terms of community consultation. He's complained that there has been a lack of availability in terms of people being able to get in to speak with planners about the proposal in Stanhope Gardens. Even though it was advertised as the Kellyville-Bella Vista TOD, the significant uplift has been in Glenwood and Stanhope Gardens. Will you be entertaining actually extending that consultation?

ANTHEA SARGEANT: I've heard that feedback as well. At this stage we're not planning to extend the exhibition close date; however, we will be offering an extra consultation evening or afternoon, still to be arranged, for the people that live in Stanhope Gardens. So we'll be put—

The Hon. SCOTT FARLOW: So the people in Stanhope Gardens get an extra consultation evening, which is good news. Why didn't the people who live in all of the other TOD SEPP locations get any consultation evenings or sessions?

ANTHEA SARGEANT: They do. We're running two face-to-face consultation sessions in each precinct.

The Hon. SCOTT FARLOW: No, I'm talking about the TOD SEPP locations.

ANTHEA SARGEANT: Oh, the TOD SEPP locations.

The Hon. SCOTT FARLOW: The TOD SEPP locations—you didn't hold one consultation evening session with anyone who lived in any of those precincts.

MONICA GIBSON: You're referring to the making of the SEPP for the sites that are deferred. I think I've previously answered today—

The Hon. SCOTT FARLOW: No, not the sites that are deferred, all of the sites. There was not one consultation held in any of those sites, unless you can tell me differently that residents had any consultation session any of those now 37 locations.

KIERSTEN FISHBURN: We undertook consultation with the councils in that area, who are the representatives of—

The Hon. SCOTT FARLOW: But not with the residents.

KIERSTEN FISHBURN: No, not with the residents but with the councils, quite extensively.

MONICA GIBSON: As Ms Shalhaf's mentioned in the matters that were considered in identifying the TOD SEPP locations, we did look at councils' local housing strategies and local strategic planning statements for locations where council had identified that work and also where previous strategic planning work had been endorsed by the New South Wales Government. For example, the Parramatta Road Urban Transformation Study—I have left out the "Corridor" there somewhere.

KIERSTEN FISHBURN: PRCUTS.

CORRECTED

MONICA GIBSON: Those precursors to the TOD SEPP locations all involved community consultation either by State at the time of those strategic plans or by council when they have done their local planning.

The Hon. SCOTT FARLOW: There was no strategic plan in place in Croydon or Killara or Teralba or any of those locations. Nobody was expecting six-storey buildings in the Malvern estate, were they?

KIERSTEN FISHBURN: We can't speculate on what the residents at the Malvern estate—

The Hon. SCOTT FARLOW: You know that wasn't the case. They were expecting 50-storey buildings in Burwood but they weren't expecting six-storey buildings in the Malvern estate.

KIERSTEN FISHBURN: As Ms Gibson has detailed, these have been in local strategic planning statements of councils.

The Hon. SCOTT FARLOW: They haven't.

The CHAIR: I think the breadth of submissions we have received from council would reflect that they themselves felt that they had been ridden roughshod and their plans had been ridden roughshod over the top of. I think that's quite clear.

The Hon. PETER PRIMROSE: There has been a suggestion there. Do the witnesses wish to respond to that?

KIERSTEN FISHBURN: I was going to take that as a statement. But I should stress that we have consulted with councils, we have spoken to councillors and mayors, we have spoken to general managers and we have spoken to planning staff extensively. Councils have put forward additional TOD sites, which would certainly indicate that they're willing to engage in the program, and the conversations with councils continue on a daily basis around planning controls and the implementation of TODs and accelerated precincts.

The CHAIR: I think it's fair to acknowledge that a lot of that consultation has perhaps happened after some of the initial announcements and events. Perhaps that wasn't the department's own fault or intention and it just kind of happened that way, and some time has taken place from when submissions were made to this inquiry and now. I think it's fair to acknowledge that those councils—many of them—that have made submissions and have already presented to this inquiry feel that the work of the department in releasing some of these areas early on actually undermined some of their work with their communities and their consultation, and that they feel that there was a diminished trust with them and their communities because of the work the department has done but that you've tried to make good. We appreciate that. Would you agree?

KIERSTEN FISHBURN: Chair, I want to stress that the department works with councils on a daily basis. We have been actively involved in their local strategic planning statements, in their housing strategies, in their strategic planning, in their future directions and in their community strategic plans for years and for decades. This is not an isolated thing that occurs—that we work with councils to realise aspirations in their strategic plans. Occasionally, the State will do State-led rezonings, as we are at this point in time. It's not as though we simply appear at a council once every 12 months and bring in something.

We have been actively engaged with councils on a range of planning matters. Their LSPSs—their local strategic planning statements; sorry to acronym it—come into the department. We discuss them with the councils, we work with council general managers and we work with council planning staff on literally a daily basis. Yes, I can appreciate that councils at times can feel—and I know that some of them have made this statement—that the State has brought in a heavy hand. But we have not done this without looking at granular detail about what councils have considered for their own areas themselves, about what is appropriate in terms of what infrastructure can be delivered and what are the particular housing needs, including rebalancing around existing infrastructure as well. I'm not going to argue your statement that some councils may have felt that the State has been too interventionist in this, but we haven't done it in isolation of looking at what has been occurring in planning in Greater Sydney throughout many years in the past and coming into the future as well.

The CHAIR: So their submission is just having a whinge?

KIERSTEN FISHBURN: I would never say that. I want to stress, we work collaboratively with councils all the time. Yes, of course, councils are going to be frustrated at the State sometimes. Sometimes the State—heavens forbid—can get frustrated at councils as well. But one of the things that we have seen through this process is a genuine willingness of councils to accept their responsibility for delivering housing and that they understand that the housing crisis and housing pressures are as acute as the State's understanding of them as well. I think councils have actually responded exceptionally maturely. The fact that some of them have come to the table with new TOD sites and that the accelerated precincts have been a genuinely collaborative planning process

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is a really good example of State and local governments working together to deliver on what is genuinely a crisis situation for the people of New South Wales.

The Hon. ANTHONY D'ADAM: I was curious about the proposal and the tier 1s for the department to undertake master planning. I want to specifically ask, in an area like the Homebush precinct where it has got a high level of high-density developments already there, what does master planning actually look like where, really, the horse has bolted in terms of the interventions that might create—

ANTHEA SARGEANT: The Homebush master plan is based on the Parramatta Road corridor study, whatever it is—PRCUTS. A lot of the rezonings under that hasn't actually occurred yet. What we're doing is master planning that precinct to pick up the rezonings that haven't occurred but also look at where additional density could be supported, based on some of the new infrastructure that's coming into that precinct. It's one of the best-located precincts out of the whole program that we're delivering. There are four or five stations within a walking distance of the area that we're master planning. We really genuinely think that there is opportunity to provide greater density in some of those locations, and that's what the master plan is seeking to do. I do want to stress that it is out on public exhibition at the moment, so we are taking feedback from the community as to what those plans might look like.

KIERSTEN FISHBURN: Ms Sargeant, can you just talk about the relationship with council in terms of developing that master plan?

ANTHEA SARGEANT: There are two councils, Canada Bay and North Strathfield, and we've been working really closely with them—this work started in November of last year. We've been working really closely with councils, as with other government agencies, to support the plans that we now have out on exhibition. Councils are very supportive. We have briefed the councillors a number of times and a lot of their feedback has been incorporated into the master plan that's now out on exhibition.

The Hon. JACQUI MUNRO: Could I ask one very quick question in relation to the Macquarie Park innovation district and that precinct area. We are now into stage two of the rezoning, but that stage two proposal was actually put out before stage one was finalised. Is that a normal procedure? People are very concerned about how they can possibly make a submission or raise questions about stage two when they don't even know what has happened in stage one and how that has been resolved.

MONICA GIBSON: I am going to answer and Ms Sargeant might answer as well. It was a deliberate thing to not finalise stage one until we had exhibited the proposal for stage two so that the community could see what was being proposed in stage two and to make some comments. It will enable us to consider those cumulative impacts from the submissions that are made in finalising both stage one and stage two.

The Hon. JACQUI MUNRO: This is essentially about wiping out the work that was started in late 2022 for the original rezoning proposal around the innovation district and putting on top the TOD and, basically, allowing that work to be done without having to put in any plans relating to that first rezoning proposal?

ANTHEA SARGEANT: They're two discrete areas. Stage one is looking at a portion of the site and then stage two is looking at the adjoining area. We're not wiping anything out from stage one. The stage one planning controls, as they were exhibited, we are still working through the finalisation stage, but it is looking fairly similar to what was exhibited. Stage two is for a very different area.

The Hon. JACQUI MUNRO: But it does change the nature of the precinct?

KIERSTEN FISHBURN: All rezonings will change the nature of a precinct. That's the nature of a rezoning.

ANTHEA SARGEANT: I should also add that both stage one and stage two are consistent with the place strategy that was finalised some time ago for the entire innovation precinct.

The CHAIR: We are over time. I would keep you here all day, if I could. The secretariat will contact you in relation to anything taken on notice. Thank you very much for your time and for your evidence.

(The witnesses withdrew.)

CORRECTED

Ms LEANNE BOYLE, Chief Property and Place Officer, Sydney Metro, affirmed and examined

Mr SIMON HUNTER, Chief Transport Planner, Transport for NSW, affirmed and examined

Mr MATT McKIBBIN, Executive Director, Planning for Places, Transport for NSW, affirmed and examined

Ms KATE MILES, Head of System Planning and Land Acquisition, Sydney Water, affirmed and examined

Ms LISA HARRINGTON, Acting Deputy Secretary, School Infrastructure NSW, NSW Department of Education, affirmed and examined

The CHAIR: Thank you for making the time today to come and give evidence. Would anyone like to make a short opening statement?

SIMON HUNTER: I would be happy to, Chair, on behalf of Transport for NSW and Sydney Metro. I would like to start by acknowledging that we are meeting on Gadigal country and, as the Committee has done, pay my respects to Elders past and present and their ongoing unbroken connection to the land and waters of this State. The Transport Oriented Development Program is one of the many steps working towards the National Housing Accord by unlocking housing supply for New South Wales. We across the transport agencies, Sydney Metro and Transport for NSW, have been working very closely with the Department of Housing, Planning and Infrastructure to help deliver on the State Government's priorities around housing.

The Transport Oriented Development Program will provide more homes closer to jobs and amenities. It will support increasing the use of public transport and active transport and, we believe, lead to a reduction in reliance on private motor vehicles for all trips. This program also provides an opportunity to support housing through local infrastructure delivery, including walking and cycling improvements and good quality open space for communities, creating liveable places. To help inform investment decisions, Transport for NSW and our partner agencies have worked closely with the Department of Planning, Housing and Infrastructure. We've provided advice to support the identification of precincts. We've also supported the development of the exhibition materials for the accelerated precincts and worked with the department of planning to identify transport infrastructure and services needed to make these new housing areas successful.

Our colleagues at Sydney Metro lead the development of station precincts. They have designed, developed, activated and managed those station precincts alongside the delivery of Sydney Metro. Their developments respond to local context of where stations are located, and this is working to ensure the best outcomes for passengers, residents and communities. Our work is ongoing and we'll continue to assess the impact of any proposed housing growth on the transport network so that we can plan services and infrastructure over coming years. Thank you for the opportunity to appear today. I am joined by Mr McKibbin and Ms Boyle to answer any questions the Committee may have.

KATE MILES: I would like to make a statement as well, on behalf of Sydney Water. Thank you to the Committee for the opportunity to attend the hearing today to outline Sydney Water's position on the Transport Oriented Development Program and how water and wastewater networks will support increased growth in Greater Sydney. Sydney Water is acutely aware that Greater Sydney is experiencing a generational housing crisis. The TOD program represents a policy to deliver more housing to 45 transport hubs. I want to be clear in addressing the various concerns that have been raised in multiple channels that suggest that Sydney Water does not have capacity to handle increased growth in these precincts.

Sydney Water was consulted during the shortlisting of TOD sites and responded to several rounds of inquiries between July and November in 2023. Sydney Water's ability to service the TOD sites was also independently reviewed and affirmed by the now DCCEW Water—what was DPE Water—and Infrastructure NSW in February and March of this year. The growth in the eight part 1 accelerated TOD precincts is broadly consistent with what Sydney Water was already planning to service over the next five-year period. For six of these precincts, we have existing capacity to meet the growth or we're already delivering the upgrades required to facilitate the dwellings within the housing accord period. For Bankstown and Homebush, we'll need to accelerate delivery of investments already in development by one to two years in order to meet the capacity requirements.

Part two of the program consists of 37 TOD precincts across Greater Sydney, the Illawarra, the Central Coast and Newcastle, which will deliver increased housing through SEPP amendments. We have assessed the sites within our area of operations and expect to accommodate the growth in those sites with minimal additional investment. There is a misconception that age of infrastructure is a factor in determining capacity, and this is not the case. In cases where an asset is coming towards its ends of its life, its renewal is planned and accounted for. Furthermore, the number of breaks and bursts in our network is not a factor in determining capacity of the water

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or wastewater systems either. Sydney Water is supportive of an increase in infill growth and is confident that its infrastructure will capably service the TOD precincts according to the growth forecasts that we were provided for review.

The CHAIR: Would you like to make a statement?

LISA HARRINGTON: I would, thank you, on behalf the Department of Education. I would also like to acknowledge the Gadigal people of the Eora nation as the traditional custodians of this land. New South Wales public schools are at the centre of their communities. Every child who wishes to attend has a place. Every family is welcomed, and we encourage families to enrol their child at their local public school. The New South Wales Government is committed to addressing the current housing shortage by prioritising the building of homes in well-located areas near transport, open spaces, schools, hospitals and community facilities. In response, we are delivering the very best school infrastructure for the families living in these communities.

Cross-agency and cross-industry collaboration is key to delivering this commitment. The Transport Oriented Development Program provides the public with more insight into future growth areas. The Department of Education is working with other agencies to ensure we plan and deliver the school capacity that is needed to support these areas. Our focus is on delivering school infrastructure that is fit for purpose and responsive to ever-adapting social and physical environments. This is about ensuring that the infrastructure that supports access to early childhood, school education and post-school training is delivered in the right place, at the right time, and keeps up with population growth and housing demand into the future.

To deliver this, we are working with our public sector and industry partners to plan for new schools, plan upgrades to existing schools, and consider access and transport to and from our schools. We are developing more land-efficient urban schools of between five and seven storeys in height to respond to changing demographic trends and the need to locate schools in highly dense and densifying areas. This approach will be considered to support transport oriented development areas. We are designing these schools in areas adjacent to transport hubs and sports fields to encourage walkable and rideable communities.

Through community use agreements, our school facilities can benefit the broader local community via after-school access to halls, gymnasiums, sports fields, libraries and so on, again, positioning schools at the centre of our communities. We are pleased to be part of the Department of Planning, Housing and Infrastructure's Greater Sydney Urban Development Program, which monitors housing and employment land supply and assists infrastructure coordination in Greater Sydney. We also look forward to working with Infrastructure NSW's Central Infrastructure Coordinating Committee, which will help Education deliver important school projects for New South Wales. Thank you, and I look forward to answering your questions.

The Hon. SCOTT FARLOW: Thank you very much to all of you for being here today and for your work on the program as well. I might start off with Transport and Mr Hunter. One of the requests we've had from many participants in the inquiry—whether they've been councils, interested community groups or other stakeholders—is with respect to an analysis of the capacity within the road network demonstrating that additional development can be accommodated under the current network conditions. Is this something that Transport for NSW fed into the program?

SIMON HUNTER: I think Mr McKibbin might be better to talk about the assessment that we worked through with the Department of Planning during the site selection of these projects, so I might hand over to him.

The Hon. SCOTT FARLOW: Mr McKibbin, was there any analysis done of road capacity when it came to the site selection?

MATT McKIBBIN: Transport for NSW provided the Department of Planning with an assessment of the existing transport capacity across both the road and the rail network in the selection of the TOD precincts. For the road network in particular, the work that we did looked at the degree of congestion that's experienced during peak periods relative to off-peak periods, and it gives us a good indication generally of which precincts suffer more road congestion. I will say, though, that the time at which road congestion issues are dealt with more substantively is during the rezoning process. What you'll see now with the several TOD precincts that are on exhibition is that there are specific transport statements which have looked at local traffic congestion and have also identified infrastructure which can be delivered to address those concerns.

The Hon. SCOTT FARLOW: Mr McKibbin, when was that work undertaken?

MATT McKIBBIN: Could I clarify which stage of work? Is it the site selection?

The Hon. SCOTT FARLOW: You were saying about the road capacity of the peak and off peak. I take it that that was for the TOD sites. Is that correct?

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MATT McKIBBIN: Specifically it was the accelerated precincts.

The Hon. SCOTT FARLOW: Both the accelerated precincts. Was that part of the 305 station assessment?

MATT McKIBBIN: It was. We provided that advice to the Department of Planning in the second half of last year.

The Hon. SCOTT FARLOW: If that were the case, why did we not receive any of that advice within the Standing Order 52? Why is there no evidence of that?

MATT McKIBBIN: I'm sorry, I can't speak to the terms of the standing order.

The Hon. SCOTT FARLOW: It was quite specific in terms of road capacity analysis. There was no evidence whatsoever of any assessment that was undertaken or provided to the department.

SIMON HUNTER: There is a two-stage process that was followed. There was the assessment that Mr McKibbin referred to where we looked at high-level capacity analysis, particularly on the rail and public transport networks, up until 2036 that informed the selection of the sites. During the process where the sites were being prepared for exhibition, the Department of Planning, Housing and Infrastructure led transport studies that have now been published as part of those exhibition documents.

The Hon. SCOTT FARLOW: But this is the distinction, though, in terms of the tier 1 sites and the SEPP sites.

SIMON HUNTER: My understanding is that those studies were prepared and finalised after the Standing Order 52, but we can confirm that and provide an answer on notice if we need to.

The Hon. SCOTT FARLOW: That's after the site selection, then. You prepared those studies after the sites were selected so they didn't form part of the assessment of those sites in their selection.

SIMON HUNTER: The selection of sites process was largely based on a high-level strategic analysis that we did iteratively with the Department of Planning, Housing and Infrastructure during the second half of last year. After the shortlist had been narrowed down, through the process that was outlined by the earlier witnesses, the Department of Planning, Housing and Infrastructure led the development of transport studies—transport statements—that have now been placed on exhibition. I think it was a two-stage process, if that helps clarify the answer.

The Hon. SCOTT FARLOW: It does help clarify, but it also shows that in terms of actually selecting the sites, there was no analysis done of the road constraints in that selection, particularly of those 37 tier 2 sites.

MATT McKIBBIN: No. I'd agree with your question for the tier 2 sites. What we've done there is provided primarily—because this is the Transport Oriented Development Program—an analysis of where the rail capacity sat that we are clustering development through the TOD SEPP amendments. The specifics of the tier 2 precincts—the assessment of traffic congestion, or traffic issues, would be undertaken at the development assessment stage.

The Hon. SCOTT FARLOW: With respect to the transport capacity, did you ever identify challenges with the cumulative impact of the TOD selection of four stations on the North Shore line and the accelerated precinct at Hornsby, and what that would mean for the T1 North Shore line? Was that ever a concern of Transport for NSW?

MATT McKIBBIN: What we've done is provided advice on the stations that do have capacity for growth, and that was taken into account as part of the Department of Planning's shortlisting process.

The Hon. SCOTT FARLOW: But, specifically, was there ever a concern from Transport for NSW with respect to the selection of four stations on the T1 North Shore line as part of the TOD SEPP in addition to the accelerated precinct at Hornsby?

MATT McKIBBIN: We have not raised any concerns with the department of planning in that respect. What I will say, though, is that we continuously review levels of demand and transport network performance across the State's transport network, and we manage that to meet the customer needs across the network.

The Hon. SCOTT FARLOW: So your evidence is that Transport for NSW never raised any concerns about that cumulative impact?

SIMON HUNTER: We looked at the planned investments and programmed investments and forecast growth in patronage out to 2036 as part of the process of informing the site selection. Due to a range of factors such as existing capacity and patronage forecast changes, the opening of significant new infrastructure such as

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Sydney Metro City and Southwest, the assessment of capacity on that line was that it could support the objectives of the TOD program.

The Hon. SCOTT FARLOW: With respect to the tier 2 sites in particular, has Transport for NSW changed any of its plans to upgrade roads in any of those areas?

SIMON HUNTER: We are planning to work through the process of considering the uplift and the development of each of those sites with the Department of Planning, Housing and Infrastructure. As Mr McKibbin identified earlier, at the rezoning and then development application stage for those precincts, we'll look at the detailed infrastructure and services treatments required.

The Hon. SCOTT FARLOW: Thank you very much for that response. I might turn now to Sydney Water. You've outlined that there are minimal concerns in terms of upgrades required. As a result of the tier 2 TOD SEPP, have you had to alter any of your plans at all in terms of upgrades?

KATE MILES: In terms of upgrades, it's the next five years, if there was a constraint, that would present a constraint. Anything beyond the five-year period, we absolutely know that we have time to come back in and upgrade. During the review process we were very transparent around which areas would trigger an upgrade that perhaps could not be fulfilled within the housing accord period, so we are comfortable with the tier 2 SEPP program for the areas where minor upgrades are required—and they are minor, particularly for the SEPP sites—that we can implement those in a timely matter within the housing accord period.

The Hon. SCOTT FARLOW: Will there need to be an upgrade at Gordon?

KATE MILES: There are minor upgrades within the Ku-ring-gai Council areas. Those were advised and they are minor upgrades. I think Gordon might have been \$5 million or \$10 million. In terms of the investments that we make, they are relatively minor, straightforward projects.

The Hon. SCOTT FARLOW: What is your classification of minor upgrades, then?

KATE MILES: So a local pipeline upgrade, for instance—we might have to upsize a 200-millimetre pipe to a 300- or 400-millimetre pipe for a couple of hundred metres. That's the kind of example I'm talking about.

The Hon. SCOTT FARLOW: So what's the total value of the upgrades that are required as a result of the TOD SEPP?

KATE MILES: As a result of the TOD SEPP, from recollection, it's around \$80 million. Our capital program over the next 10 years is \$34 billion, on average \$3.4 billion a year, so that's a fairly minor—

The Hon. SCOTT FARLOW: Is that \$80 million over the housing accord period?

KATE MILES: That's right, and that's easily accommodated within that budget.

The Hon. SCOTT FARLOW: I might go now to Education. What advice did Education provide Planning with respect to the identification of the sites when it came to school capacity?

LISA HARRINGTON: We did have engagement with Planning ahead of the announcement for the TODs. A lot of the work that we're doing already as part of our enrolment growth audit and growth area schools plan is very similar in terms of looking at the growth areas and making sure that we've got as granular detail as possible so that we can meet enrolment demand. A lot of the conversations we were having ahead of the announcement were just around the growth areas, the work that we've got underway to understand where there's need so that we can make sure that's aligning with Planning's work.

The Hon. SCOTT FARLOW: We've seen an analysis of the 305 sites that was undertaken by Transport for NSW. Was Education similarly given a list of the 305 sites and asked for school capacity within those areas?

LISA HARRINGTON: I might have to take that on notice in terms of that list but we certainly had engagement with Planning ahead of the announcement to make sure we were feeding in our analysis of where there's demand. I can come back to you on the list.

The Hon. SCOTT FARLOW: With respect to that, when was that engagement?

LISA HARRINGTON: The engagement was at the end of last year. I think from around October there was close engagement around the TODs—the need that we were seeing and the need that Planning was seeing, and the need to align those perspectives.

The Hon. SCOTT FARLOW: Did you provide them with any assessment of school capacity in the area?

CORRECTED

LISA HARRINGTON: Again, yes, just generally. We do engage with Planning regularly to make sure that we are aligning, as I mentioned in my opening statement, the work that we're doing and the other infrastructure, obviously to make sure that schools are in the communities where they're needed and to make sure there's enabling infrastructure as well. A lot of that work is ongoing and, as I mentioned, at end of last year there was a lot of discussion around the TODs. We are already looking at, as part of the enrolment growth audit, how we make our enrolment projections as granular as possible.

While it's important to make sure we understand where Planning's focusing, the rubber really hits the roads for us when we start to get a sense of the number of dwellings and the type of dwellings. We've certainly found through our enrolment growth audit that the type of dwellings and the number of families per house makes a big difference. It's not just the number of dwellings; it's also how many people and how many kids are in each dwelling, obviously. So while it's important for us to stay close to Planning at the moment as we get a sense where they're focusing, really until we get that granular understanding of the number of dwellings and type of dwellings, we can't hone in on very specifically when we need schools and the amount of capacity we need.

The Hon. SCOTT FARLOW: With respect to a site—and we'll choose the Kellyville Bella Vista TOD area, for instance—at the time that advice would have been provided, you had schools within that catchment being Kellyville Ridge Public School at a capacity of 211 per cent, Beaumont Hills Public School at a capacity of 114 per cent, Kellyville Public School at a capacity of 170 per cent, Parklea Public School at a capacity of 143 per cent, Caddies Creek Public School at a capacity of 168 per cent and Bella Vista Public School at a capacity of 109 per cent. Now we've seen a proposal that's increased residences within that catchment by more than 20,000. What is this going to mean for school infrastructure in that area?

LISA HARRINGTON: As I mentioned with the enrolment growth audit, the fact that there's a lot of demand in the north-west is not new to us. We're very focused on the north-west, where there's a lot of investment going on in the north-west so we are already seeing, as identified in the enrolment growth audit, huge demand in that area. We're very focused on that area in terms of upgrades at existing schools and new schools. As I mentioned, we're already working out how we can make our enrolment projections more specific, more granular. We're adding in extra data sources and we're speaking with local councils, developers, principals and our asset management teams to make sure we've got the most accurate picture possible. The fact that there's huge growth in the north-west, as I mentioned, is not new to us. As we move closer to when the TOD changes will come in, we have to be very conscious of being aware not just of the number of dwellings that will be created but of the type of dwellings so that we can make sure we've got the right capacity.

The Hon. PETER PRIMROSE: Can I just follow up with just one? Mr Farlow has outlined quite well that deficits were left in schools by the former Government but I think the fundamental question here is: Do you think it's going to be possible to accommodate future population growth in relation to this, as well as that deficit that was left by the last Government?

LISA HARRINGTON: Not only is it possible but we have a legislative requirement to do so. In the Education Act we have to provide a space at the local school for every child that wants one so, yes, it is possible. That is the job of School Infrastructure: to make sure that we've got enough capacity at local schools for local children. It is very well outlined in the enrolment growth audit all the work that we're doing and the improvements that we're making to make sure that we do have that space in schools when children need it.

The Hon. SCOTT FARLOW: Further to that point, with respect to the EIE for Kellyville and Bella Vista, it's indicated that five new primary and high schools are in planning for Tallawong and Box Hill, which include a primary school in Box Hill, a high school in Box Hill, a primary school in Gables, a primary school in Tallawong and a high school in Schofields and Tallawong. None of these would fall into the catchment of any of the areas within either Kellyville, Bella Vista, Stanhope Gardens or Glenwood, would they?

LISA HARRINGTON: Those projects that you announced are to deal with demand that we're already seeing. Obviously the TOD changes will change enrolment projections as well. Those projects are going to deal with and provide capacity that we have already forecast. That's why it's important for us to keep close to Planning in these TOD changes so that we can be aware of what extra capacity is coming and at what time so that we can provide for that.

The Hon. SCOTT FARLOW: What is the plan, then, for school capacity in Stanhope Gardens, Glenwood, Kellyville and Bella Vista?

LISA HARRINGTON: I can provide more specific detail on that. As I mentioned, the north-west is the area we're probably watching the most closely because of the demand in that area and because it is growing far faster than was originally projected. The service planning team in the Department of Education is very focused on that area. As I mentioned, because of that fast growth that exceeded expectations, we're very conscious that we

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need to be making sure that we have that granular detail. We can't just rely on the common planning assumptions. We have to have as many data sources as we can. We have to have close relationships with councils, developers and the community to understand if that's coming on faster than expected.

The CHAIR: Ms Miles, in terms of Sydney Water you painted a very confident picture, which is very assuring. Were there any early proposals or ideas of areas that Sydney Water had to push back on and say, "Hey, we have got some sensitive zones. Can we avoid those?"

KATE MILES: Yes. While we didn't see all 305—the department was lovely and shortlisting before they sent us all 305—there were several sites that we did come back and say the level of investment that's required to provide additional capacity is not something that we could do at a rapid pace, particularly, for instance, where we need to upgrade a wastewater treatment plant to treat a higher volume of wastewater. So they were all the examples where the cumulative impact of several sites may trigger a larger upgrade. We provided advice where a trade-off potentially needed to be made because we wouldn't be able to accommodate both, but we could accommodate one or the other.

The CHAIR: Can you give a couple of examples of where those areas were?

KATE MILES: My understanding is that those areas are still Cabinet in confidence because there are future TODs that could be announced, so I would be reluctant to say here on record. I could take it on notice and reconfirm that with the department.

The CHAIR: With the Central Coast and the train, has there been any concerns identified to you about the service there and any TOD program around the Central Coast area that is a major problem for people and the train service there?

MATT McKIBBIN: My recollection is that the consultation with councils on the tier 2 SEPP locations did identify some questions from councils about service levels on the Sydney Trains network. Our assessment of that was that these other locations in those areas, such as the Central Coast, are best placed to support growth because they have the benefit of the existing intercity rail line. Those service levels can be increased over time to meet demand.

The CHAIR: On that, what is the thinking? How do you improve? Is it literally more trains? Some of the complaints are that they just don't turn up, they don't run on time, "We're planning on putting on more people"; it's the reliability issue. Is that something under consideration that if we're having more people and the kind of service that's there?

MATT McKIBBIN: I'd say that a standard part of our service planning is to meet the population projections that the department of planning sets and understand how that might impact service levels into the future.

The CHAIR: Is that something that you're looking at? Is that in your pipeline of things to do on the list, or is it something that happens if the complaints or concerns grow and then you address it? Is it proactive? How does that work?

SIMON HUNTER: I think as far as possible we try to be proactive. Earlier there was reference made to the common planning assumptions that New South Wales government agencies use. Those assumptions are largely driven by the projections of where population will live and the forecasts around housing supply and then we model the likely travel behaviour of people based on where they are living, where they might be working or what other destinations they are travelling to. And then we try to progressively plan upgrades to services to increase frequencies or anything like that. Following the rail review last year, there has also been a significant focus on maintenance on the rail network to improve reliability, which has been announced and covered by the Government.

The Hon. JACQUI MUNRO: This question is about a transport dataset. It's the travel zone projections. There is a travel zone projection from 2022. Is there an updated dataset that you will be using for the estimation of transport that was needed or is that something that has formed part of this assessment?

SIMON HUNTER: We do progressively update the travel zone projections based on those previous sources I mentioned around the projections of population housing supply. If you need the specifics around when the next release is and when they will be updated, I would probably have to take that on notice, unless you can add any more detail, Mr McKibbin?

MATT McKIBBIN: No.

The Hon. JACQUI MUNRO: That would be fantastic. Is the intention that they are made public again, as they have been in the past?

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SIMON HUNTER: The apps from our models and the information that we use through our advanced analytics and insights area have quite a broad range of datasets that are available for the public. We'll share with councils and others, yes.

The Hon. JACQUI MUNRO: So that would include this one.

SIMON HUNTER: That is the basis of much of the modelling that is made public, yes.

The Hon. JACQUI MUNRO: So the next travel zone projection dataset will be made public?

SIMON HUNTER: I believe so. If it's okay, I would like to take that on notice to confirm when it will be done, following the population projections, and what the process for making any information public is.

The Hon. JACQUI MUNRO: On schools, in relation to Macquarie Park, what's the estimation for the need for schools and how will that be addressed?

LISA HARRINGTON: Macquarie Park is an area that we are looking at very closely. We are seeing a lot of demand in that area. There are various investments already. I can come back to you on those specific ones. In terms of our areas that we are focusing on closely, that is definitely one.

The Hon. JACQUI MUNRO: We know that there are some schools in the works, but what is the plan for the next phase of developing a plan to deliver schools? Obviously, there will be a lot more people in the area.

LISA HARRINGTON: At the moment we are working on one of our election commitments, which is the growth area schools plan. As part of that plan, we will be providing more detail on how we are making sure that we—first of all, the areas that we are identifying as those growth areas and how we are going to be responding. That will be in the coming months. I can't give you a time frame, but we are working on that now.

The Hon. JACQUI MUNRO: Before the end of the year?

LISA HARRINGTON: I'm not sure that I can say before the end of the year, but in the coming months. We are working on it now. I can't give you a sense of exactly when that will be released, but it will be within the coming year. I would say that.

The Hon. JACQUI MUNRO: So 12 months?

LISA HARRINGTON: Yes, but it might be sooner than that. It hasn't been decided. The department is working on that closely at the moment. We haven't yet worked out with the Government when that will be released, but the department will be finishing that work by the end of the year.

The Hon. JACQUI MUNRO: In terms of the accelerated precincts and the other precincts, how will you be managing that timescale? Obviously, you have a set of populations that will be evidently increasing if this goes ahead much more quickly than some other areas and may need a plan much more quickly than 12 months time. How will you be managing those two different streams of pace?

LISA HARRINGTON: It's not too different in terms of the way that we normally work. Day one, term 1 is a key point for us. We need to make sure that we are collecting all the data and making sure that we have a very accurate understanding of the number of kids that are going to turn up for day one, term 1. The fact that we've got the TOD activity really just means that that is fed into our normal way of planning. It's another stream of activity that we need to consider. It affects our projections; it affects the data sources that I mentioned to you. So it's not separate to the normal way that we do our work.

I agree with you that it is going to change things, and so that's why we need to stay very close to Planning and to work with our other Infrastructure colleagues to make sure that we've got the right understanding of when that growth is going to come on. But, as I mentioned before, it's really important to make sure that it's not just the number of dwellings. We have to get as much understanding as we can about the types of dwellings. So, at this particular point, we're not able to say exactly how it's going to change our projections. We just need to keep monitoring that.

The Hon. SCOTT FARLOW: But with respect to Macquarie Park, Ms Harrington, sites are running out, effectively. This has been on the boil for a while. Are there sites that are identified for a new school or for additional new schools now, considering that the projections have changed so significantly in Macquarie Park?

LISA HARRINGTON: Again, back to the way that we work, it is to produce a capital investment plan each year, which recommends to the Government and to ERC the investments that we think need to be made to meet capacity and also to meet renewal needs for schools. That's the way that we have always worked.

The Hon. SCOTT FARLOW: That's all well and good, Ms Harrington, but we have a challenge in Macquarie Park because, effectively, a lot of the sites that have been rumoured over time—the old Peter Board

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High School site, for instance, under these plans is now rezoned to a 192-metre building at that site. I would say that that site is effectively off the table unless a school forms part of a 50- or 60-storey development. At Lachlan's Line, I think work is already being undertaken on some of the sites there that were previously identified. Where are the sites in Macquarie Park for a new school?

LISA HARRINGTON: I'm not going to share with you now the sites that we're looking at. Obviously we, as part of our land acquisition—

The Hon. SCOTT FARLOW: But in terms of the EIE, there's no reservation for a school site.

LISA HARRINGTON: As part of our land acquisition, it's obviously not in the department's or taxpayers' interests for us to disclose what sites we're looking at because we have negotiations with the owners of those sites and it would affect the commercial outcomes for the State if we were disclosing that. All I can say to you is, absolutely, Macquarie Park and, as you mentioned, the activity around Lachlan's Line are a focus for us. We are seeing the growth in that area. It is challenged—I agree with you—in terms of the density. It's not an area where you can fit a lot extra, so there's not a lot of space for extra schools and extra buildings within schools. It is one that we're looking at very closely as to how we can make sure we can meet the enrolment needs for communities in that area.

The Hon. SCOTT FARLOW: But part of the challenge where you have these plans that are on exhibition at the moment, where no school site is identified but sites across the precinct are universally, effectively, being upzoned, is that it means that the taxpayers in New South Wales will have to pay more to buy a site in the future, because it has a higher value because it has a higher zoning.

LISA HARRINGTON: I completely agree with you. One of the recommendations of the enrolment growth audit was to have that land acquisition strategy, which will mean that we are planning more over the long term to acquire land early on so that we are not paying more than what we need to. That is work that is underway and is one of the recommendations of that audit.

The Hon. ANTHONY D'ADAM: I understand that School Infrastructure has been developing new models in terms of how you might construct schools that enable a much more agile approach to this. Could you elaborate on how that might help deal with the questions around increased population growth in TOD areas?

LISA HARRINGTON: Thank you. Yes, that's right. It's not just on the enrolment projections and the need to make them as accurate as possible. That will allow us to be more responsive, as you said, in thinking about construction. We're moving to a much more standardised design. That will mean that it is quicker for us in that planning phase. Also, from a construction point of view, modern methods of construction. Offsite manufacture and onsite assembly make it a lot quicker. All of those measures or all of those streams of work, combined, will allow us to be far more responsive.

It also means that we will hopefully reduce the amount of demountables because we are able to construct permanent facilities quicker, and also the State avoids that double cost of installing a demountable and then coming along later to install more permanent facilities. So reducing the time in the planning stage, standardising design, offsite manufacture and onsite assembly—they're things that we are really focused on to try to reduce those timeframes to get schools and upgraded schools ready for students when they need them.

The Hon. ANTHONY D'ADAM: Ms Miles, are there areas where you believe that the Sydney Water infrastructure capacity could support further growth?

KATE MILES: That was actually something that we did look at as part of the Infrastructure NSW review. We are very supportive of infill growth. We do actually have quite a bit of latent capacity within our existing systems—within the more infill areas—thanks to our customers doing a fantastic job with water conservation. It's actually meant that, with those pipes that perhaps in the 90s or the 80s were coming close to full, we got back a lot of capacity. There were many other areas that we were consulted on as part of the TOD process that we advised that we have system capacity to service, as well as some areas that were outside of the TOD process that perhaps weren't around train stations but did have capacity because we're already building large infrastructure there—potential for acceleration, for instance. That advice has been passed on.

The CHAIR: Thank you for making time to give evidence. The secretariat will be in contact with you with anything taken on notice.

(The witnesses withdrew.)

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Mr BEN PECHEY, Executive Manager, Strategic Planning and Urban Design, City of Sydney Council, affirmed and examined

Mr PETER JOHN CANTRILL, Urban Design Program Manager, Strategic Planning and Urban Design, City of Sydney Council, affirmed and examined

Mr TODD CARNEY, Mayor, Penrith City Council, affirmed and examined

Ms KYLIE POWELL, Director, Futures and Strategy, Penrith City Council, affirmed and examined

The CHAIR: Welcome to each of you. Thank you for making the time to come and give evidence today. Would anyone like to make a short opening statement?

TODD CARNEY: I'd like to do that on behalf of Penrith City Council. Thank you for the opportunity to speak today. Council made a submission to this inquiry as St Marys was listed as a Transport Oriented Development precinct. It is the only one in the Western Parkland City. We have significant development capacity in Penrith, and we are committed to delivering housing. We are working with government to achieve our housing targets. Penrith's planning offers a balanced solution, linking housing provision to increased employment opportunities and infrastructure to support the growing population. We are committed to densification around train stations, as shown through our housing strategy, and the development of the St Marys structure plan and draft master plan, which is underway.

St Marys has the current potential to accommodate more than 7,000 dwellings and generate more than 9,100 jobs by 2041. This will increase, once the master plan has been completed, to the capacity of housing available. Planning for growth should be about more than just housing; it's about jobs too. We need a balanced focus to create vibrant, sustainable communities. Planning reforms aimed at promoting high-density housing represent only one piece of the multifaceted solution that is required to stimulate housing supply. Other critical considerations include development feasibility and infrastructure servicing. Adequate infrastructure provisions are essential. This includes basic servicing infrastructure such as water, sewerage, roads and drainage, and also more significant infrastructure responses to the social and recreational needs of the community.

Government intervention is required to ensure this infrastructure is available from the inception of the SEPP, to avoid a mismatch between supply and demand leading to inflated development and/or price expectations. We also need a suitable contributions framework in place to support growth. The time frame set for implementation of the SEPP, notwithstanding our extension to April 2025, does not allow significant time for us to prepare a local infrastructure contributions plan based on the detailed master planning work we are currently undertaking for the St Marys town centre. Local context and unique market conditions are also important considerations in determining the appropriate scale and type of development for each station precinct.

While the TOD SEPP may deliver housing outcomes in the North Shore and inner west subregions of Sydney, existing conditions in Western Sydney are not currently conducive to delivering medium-density residential flat buildings. In fact, a recent report by the UDIA and Astrolabe, dated June 2024, indicates that St Marys has the poorest feasibility outcomes of negative 81 per cent of all TOD precincts. Notwithstanding, we appreciate the Government's objective to leverage Sydney's transport network to increase housing supply, and we recognise St Marys' potential to accommodate increased growth in this regard, subject to infrastructure. However, we are concerned that the SEPP's one-size-fits-all approach to density may not be fit for purpose.

Our built form modelling indicates potential issues with the proposed SEPP controls in St Marys, including the location of the Sydney Metro tunnel preventing basement construction, and the need to consider matters such as land fragmentation and street networks to accommodate growth. Furthermore, there is already unrealised zoned capacity in the St Marys town centre. Our analysis shows that the TOD SEPP would not deliver additional density but instead may further limit the viability of land use outcomes by artificially raising expectations regarding development outcomes and driving up land values. For these reasons, our own established centres planning model, which provides the foundation for decision-making and sound policy development in a stakeholder-driven, evidence-based and place-based process, underpinned by infrastructure delivery, is the preferred direction to guide growth and change in St Marys into the future.

In the fullness of time, we intend to apply our centres planning model to our other potential TOD locations—key centres. We are well on our way to completing an evidence-based and comprehensive strategic planning framework for the St Marys town centre that we believe will deliver on the housing outcomes and expectations of the TOD SEPP. Importantly, this work includes an infrastructure delivery plan and funding strategies to support the planned growth. The St Marys town centre master plan will take a balanced and nuanced approach with planning controls that respond to detailed evidence and place-based analysis.

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We thank the Government for recognising our strategic planning framework as the appropriate means to achieve the TOD objectives in St Marys. We are committed to working with New South Wales Government to deliver this framework within the time frames set. By April 2025, we intend to have completed and adopted the St Marys town centre master plan. This plan will also outline planning amendments required to facilitate its delivery. We are keen to work with the Government to expedite the delivery of our LEP amendments at the earliest opportunity.

Penrith has significant dwelling capacity and is committed to delivering housing. We want to work with the Government to deliver the housing targets recently handed down. Our local housing strategy outlines where this should occur in the future, based on transport-oriented principles. In addition, we are working on a growth strategy that maps out the jobs and infrastructure required to support growth. As such, council is well placed to manage growth within the LGA, and we ask that the Government acknowledges and supports this process and refrains from implementing the TOD SEPP within the Penrith LGA to enable these works to be completed. Council will continue to plan for growth with a balanced and nuanced approach, place based and grounded in evidence. Thank you for providing council with the opportunity to speak today.

The CHAIR: City of Sydney, did you want to make an opening statement?

BEN PECHEY: Yes, please. Thank you for the opportunity to speak to you this morning. We, the City of Sydney, support the National Housing Accord. We agree with the intention of encouraging increased production of medium-rise apartment buildings focused around rail stations as a proxy for well-located homes, instead of planning for more urban sprawl. We support the building commissioner's reforms to improve the construction of apartment buildings and the Government Architect's work to approve the design of medium-rise apartment buildings. The City of Sydney is not affected by the TOD program. We are significantly affected by the diverse and well-located homes program, including the low- and mid-rise housing changes which the Committee is examining at paragraph (o) in its terms of reference. As many submissions have outlined, current low levels of housing production are predominantly due to a combination of economic factors that affect the housing market. Creating more planning capacity will not solve these problems. It will provide the market with more locations to respond to demand when the cost of production and the price of housing return to equilibrium.

The Australian Bureau of Statistics reports that the City of Sydney is the densest local government area in Australia, with the highest population growth rate in New South Wales. In our area, 77 per cent of dwellings are in apartment buildings, and we have over 1,500 buildings of six storeys or more. Our planning controls generally encourage apartment buildings and not prevent them. Our strategies have ensured that the number of 30- to 40-year-olds have grown continuously in number and proportion, doubling in number since 2001. We have significant capacity to respond to demand in our current planning controls. For example, there are over 12,000 dwellings to come in the Green Square urban renewal area. We continuously review our planning controls to ensure sufficient planning capacity for sustainable growth. For example, in December of 2023 our council approved planning for around 2,500 new dwellings in the city centre and in Ultimo-Pymont.

The diverse and well-located homes proposal will not add sufficient impetus for housing growth in our area. Instead, it will add complication, confusion and distraction for applicants and for our approval process, and will harm the timely deliver of housing in the City of Sydney. In some places it may cause a reduction in the number of homes rather than an increase. When we plan for housing density we include a requirement for affordable housing, and this proposal does not. In place of the low- and mid-rise proposal, we are working to introduce a series of proposals for more well-located homes. This planning will be more responsive to market conditions, supported by infrastructure and produce more affordable housing. We are meeting with the department to fulfil the Minister's suggestion to our lord mayor of a local housing accord in place of these reforms.

We also wish to tender two further documents this morning to aid your consideration. The first is a recent lord mayoral minute from 24 June entitled *Housing Density in the City of Sydney*, in which the council unanimously committed to working with the New South Wales Government on a local housing accord. The second is the latest version of our world cities comparison of population density. It's a neutral, easy to understand comparison of the interaction of transport and population density across a sample of well-known cities in Australia and internationally. This shows that in Sydney, like many cities, density is generated by rail stations. Comparatively, cities more dense than Sydney have many more rail stations. We thank the Committee for the opportunity this morning. My colleague Peter John Cantrill and I welcome any questions you may have. Thank you.

The CHAIR: Thank you for the additional material and thank you all for your submissions. Mayor Carney, where are things up to, as far as you are aware, with your plea or submission to the State to not have St Marys included? I know you have been granted the extension, but is it still your submission that you want to be excluded from that and to go with your hard work that you have already undertaken?

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TODD CARNEY: That is our choice, to have that removed from the precincts. As you've seen, we've done extensive work within our community to do place-based modelling around St Marys. Our team is working hard on the master plan now for St Marys. That will go to the new council after the elections in September, and then that will go out in public exhibition before the end of this year for the community to be able to be involved with.

An important path for us is to make sure our community is brought along with any changes that happen within our community. It's something that we have done within our housing strategy, something well before the TOD precincts were even thought about. Our housing policy stated around how do we develop around our train stations and how do we deliver the diversity of housing options for our community. Because, as we know, our communities are changing. Not everyone wants a 600 square metre block anymore. So we have to give those options around apartment-style living, but that needs to be in the right place at the right time, but also make sure the infrastructure that is required—whether it's roads, whether it's sewerage or water, but also schooling—is available for them to be able to use. Part of our work is to make sure that we have that infrastructure plan available. We know what is needed, so we can then come to the State Government or to the developers about what needs to be supplied to roll out this program.

The CHAIR: In your discussions at the moment with the department and the Minister's office, is it your understanding that you will be able to carry on your own path or that come April 2025 the hammer will come down?

TODD CARNEY: It's our understanding. As long as we keep moving along and we deliver on our expectations and what their expectations are, they will allow us to continue on with our works. If we don't deliver on that then the SEPP will then be handed down into the Penrith area. They've given us that time, but if we meet those milestones that they've set out then they'll allow us to continue on with our work.

The Hon. SCOTT FARLOW: Following on from that, Mayor Carney, with respect to that program, do you think that's an opportunity that should have been afforded to other councils?

TODD CARNEY: I understand that a lot of councils haven't done the type of work that we have, and I understand there needs to be a push in certain circumstances. But where councils have done the right thing and they've actually planned for this type of development, those councils should be afforded the opportunity to go on with their work, especially if they've had the runs on the board. As I said, our master plan was already underway before this was announced. If councils are on that path, they should be given that opportunity to move forward. But I understand there are also councils out there who aren't doing the work, and they need that push to make sure that we have those housing options available. We are in a housing crisis. We all need to do our part. Penrith is willing to do its part to deliver the housing of the future, and we're committed to that.

The Hon. SCOTT FARLOW: Mayor Carney, funnily enough I was in Penrith last week speaking with some in the industry who were outlining where there weren't zonings that were being taken up. For instance, I heard stories close to the Penrith town centre where areas were zoned for residential apartment buildings and there was a developer who was going to repurpose those to houses because the feasibility doesn't stack up. You outlined that in your opening submission as well. What do you see as the challenges in your part of the world to densify and make it work for developers to be able to take up these programs?

TODD CARNEY: Infrastructure is key. Then, when it comes to the Penrith CBD itself, it's the cap on capacity that was set in 2019 by the previous Government. They've set a cap of 4,050 properties within that because of the flood evacuation modelling. That's been sat on for some time now. It's something that we really need sorted out so we can understand what the planning future is for Penrith. As we spoke about in our submission, the model that we're doing at St Marys is something we want to now lift and shift into areas like Penrith, but we can't do Penrith until we understand what's happening around the cap. We're having ongoing discussions with the department and with the Minister around that, but it's something that's been in place for some time now. We need to know what the capacity within that is so then we can lift and shift into Penrith. But if we can't do that—if we can't lift and shift into Penrith—we're then going to move into places like Kingswood and Werrington and apply that model within those two areas as well.

We're ready to move and deliver on the housing options that are available, but there are definitely some things in our way, especially around the Penrith CBD around the cap that was set back in 2019, to be able to lift those caps so then we can even understand what those caps mean and where we can move the development opportunities around the Penrith CBD. We are doing some work now on what those financial impacts could be on the CBD. Once we understand those more fully, we'll be coming back to the Minister on those as well.

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The CHAIR: Mr Pechey, when you referred to the low- and mid-rise program, I think you said it could harm the delivery of houses that you've identified. Could you just elaborate what you mean by that and how that would play out?

BEN PECHEY: Yes. The first situation where we see that occurring is particularly in our urban renewal areas such as Green Square. The Green Square renewal area is carefully master planned to deliver very high densities and supported by infrastructure, and we have unique infrastructure regimes connected to floor space there. They're achieved by layering up a series of floor space bonuses which can be awarded when infrastructure is delivered. This is all necessary to transition a former industrial area to a high-density residential community. The planning settings through the low- and mid-rise housing—the floor space ratios are higher and therefore it erodes the need for a proponent to use the infrastructure to deliver that infrastructure. It also means that it's unlikely that the densities could be approved within the building envelopes that have been planned because the densities are higher. That affects the availability of land for streets and communal open space on a site and also affects the conditions at the ground plane, in particular wind, with taller buildings and fewer setbacks.

Resolving those issues through development application processes will be timely and will ultimately delay the production of housing and the delivery of infrastructure. That's the really critical one, our urban renewal areas. But we see similar issues play out in other parts of the council area where, again, we've carefully crafted controls to enable development that's sympathetic or works with the current character and the interaction of, say, the non-refusal standards, in particular the floor space. The ability to comply with apartment design guidelines on small sites and in areas with narrow streets will mean there is a tension in issuing approvals again, and to resolve those things will take more time and, we think, will likely lead to court appeals as well.

The CHAIR: Just with that, we heard from the department earlier that in relation to SEPP provisions et cetera, local controls will still apply; councils are very good at doing what they do; they're brilliant at doing the merit assessments, which we know, taking into consideration all these factors; and that at the end of the day councils will win in the end. But it's your understanding that that's not the case, that actually these provisions—and can you elaborate, in answering this, on what your understanding of non-refusal standards are and how they would apply when you're doing your assessment?

BEN PECHEY: It's an interesting point that councils may win in the end, whether they were the words used or not. I think we are all trying to seek the delivery of housing here and that's the win we are all after. If the processes and the planning framework slow up that delivery, then we are all losing out. I see these applications coming down to the individual merits of each application, and resolving that will take time. As applications go to the court, the court will make decisions on that and then that will flow back into the assessment of applications. Over time it will speed up—and some more certainty introduced—but getting there will take a lot of time. The proponents will want to see a development that realises the opportunities of the non-refusal standards and the council will be working to resolve the other issues where those non-refusal standards generate a conflict or a contradiction.

The CHAIR: Are you actually saying, then, that those non-refusal standards will ultimately provide muscle on the part of proponents that are seeking that opportunity for council assessment officers to get pushed in certain directions that they may not otherwise be easily pushed into? Is that what you're suggesting?

BEN PECHEY: I would expect applications from proponents would seek to take full advantage of the non-refusal standards. Then to what degree that can actually be accommodated without having other impacts and non-compliances will come down to the specifics of a site and will take a lot of time and effort to work through.

The CHAIR: Is it your understanding with those non-refusal standards that it will come down to things like floor space ratio, how much light—real amenity things that will actually generate the quality of somebody's amenity within a dwelling?

BEN PECHEY: That will be part of it. It will also be things such as how is waste serviced, access of trucks, where do the bins go. All those things require space and can that space be fit within the envelope available, given the amount of density under the non-refusal standards. Peter John, do you have anything to add?

PETER JOHN CANTRILL: I can add that I have appeared as an expert witness in the Land and Environment Court both for proponents and for councils in my previous roles. It's clear to me that the non-refusal standards for height and floor space will at times, on certain sites, be in conflict with other parts of the planning framework. There will be times when that conflict will not be resolved in the normal time period for development approvals and there will be deemed refusals taken by developers and that will proceed to the Land and Environment Court.

The Land and Environment Court will have to balance complex issues of not being able to refuse height, not being able to refuse floor space, but still meet the requirements of local environmental plans, development

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control plans and other SEPPs like the Apartment Design Guide within the Housing SEPP. How they will be balanced, that will take time. Not only will it take time, it will take effort and it will take a lot of money because experts will be called and they will need to give evidence. They go through several processes. We think that the first thing that will happen in the introduction of the low- and mid-rise reforms will be the slowing down of development approvals, meaning that these reforms could, in some places—and in our area in particular—lower the responsiveness of development to the demand of the market.

The Hon. SCOTT FARLOW: This is just going to be a lawyer's picnic, isn't it? This is all going to the Land and Environment Court, effectively.

PETER JOHN CANTRILL: The Land and Environment Court is charged to resolve things quickly and to resolve things with greater certainty. That's the job of the Land and Environment Court. We're just saying that this will increase the number of appeals to the court. The court will have resolved those. Ultimately the non-refusal standards will have more weight than other standards and other things in the planning controls. But it'll take a series of actions in the Land and Environment Court for principles to be established and for those principles then to be applied and the local government approval process and for those principles to be understood by developers making applications so that they can make their applications in a way that will give them the most timely approval time. We're saying initially one consequence of the way that these reforms have been applied—that's not to say the aim of the reform; it's just the way it's been applied—will be making housing development less responsive to the market. That will be resolved over time.

The Hon. ANTHONY D'ADAM: I don't really understand. There are no TOD zones in the City of Sydney. Why does it matter to you?

PETER JOHN CANTRILL: We're not affected by the TOD. We are affected by the low- and mid-rise housing proposal, which is a letter (o) in your consideration.

The CHAIR: Yes, it's one of the terms of reference. Are you aware of other examples within the planning scheme of non-refusal standards that would have this kind of central impact on a merit assessment in relation to density, which is what we're talking about? I can't think of any in the system.

PETER JOHN CANTRILL: I'm not aware, but I'll take that on notice.

The Hon. PETER PRIMROSE: Given we've run out of time, can I put a question on notice? Mayor Carney and Ms Powell, if you would please take on notice in your consultations with the department—I understand that's been quite close in terms of your dealings—what sort of things do you think could be improved in that process to make it more efficient, better, easier et cetera.

TODD CARNEY: Yes.

The CHAIR: We are out of time. That session went very fast. Thank you very much for your time and for giving evidence. The secretariat will be in contact with any questions on notice.

(The witnesses withdrew.)

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Councillor DARRIEA TURLEY, AM, President, Local Government NSW, before the Committee via videoconference, affirmed and examined

Mr DAVID REYNOLDS, Chief Executive, Local Government NSW, before the Committee via videoconference, sworn and examined

The CHAIR: Our next witnesses are online. Welcome and thank you to both of you for making the time to give evidence. Would either of you like to start by making an opening statement?

DARRIEA TURLEY: I'll start. Thank you, Chair, and the Committee members for the opportunity to appear before this inquiry today. My name is Darriea Turley and I'm the president of Local Government NSW, the peak body representing all 128 councils across the State, as well as related entities. This inquiry into the State Government's Transport Oriented Development Program touches on many key policy issues which are of importance to our sector, not the least of which are the need for critical infrastructure, the importance of strategic planning, the role and the value of community participation, the importance of partnerships between State and local government and, of course, importantly, the broader goal of delivering diverse and affordable housing to meet the needs of the local communities.

The Premier recently referred to these reforms as the biggest single rezoning in modern Australia's history. Some might say that is rezoning on steroids. This is precisely why it's so important to get this right, so much of this is riding on big changes. This is why respectful and constructive collaboration is so important to achieve the best outcomes. Local Government NSW, of course, understands the needs for bold policy reforms to help address the State's critical housing needs. We know that these reforms are aimed at fulfilling the Government's National Housing Accord commitments for 314,000 new dwellings by 2029.

The Hon. SCOTT FARLOW: It's 377,000 now.

DARRIEA TURLEY: Thank you—an even bigger challenge for all of us. Councils across the State acknowledge and support efforts to meet these commitments. They agree that new and more diverse housing is needed in the right locations with appropriate infrastructure and services. The New South Wales Government commitment to collaborating with local government as part of its response to the accord—unfortunately, the way these reforms were initially designed and announced did little to cultivate a positive partnership between State and local government. I do acknowledge the Government's recent steps to work more constructively with councils affected by the TOD program, and we welcome that. But there is ongoing work still needed and much greater collaboration to ensure that these density increases are supported by infrastructure, provide an acceptable quality of life for future residents, and that there is decent and timely provision of affordable housing.

To this end, our submission focused on three themes: place-based planning, infrastructure delivery plans and maximising affordable housing in each and every precinct. Councils work with their communities to accommodate growth and change that recognises the opportunities and constraints of their local area and promote liveability for existing and future residents. This important local strategic planning work needs to be upheld and enhanced, not diminished. Local Government NSW would like to see, as an outcome of this inquiry, a move towards a new culture with a genuine and respectful partnership between State and local governments, working together to plan for growth in agreed precincts that are appropriately supported by both State and local infrastructure.

Before concluding I'd also like to point out that councils do not have control over the take-up and pace of housing delivery. That is the decision of the market. We want to see changes introduced alongside these reforms to address market-related constraints which are affecting the construction of dwellings. That could see that many hundreds of existing approvals translated into actual housing constructions. Attending to the thousands of homes left vacant throughout the year is another critical aspect that could bring forward additional housing quickly. We welcome this inquiry for the opportunity to improve the delivery of the TOD program and to shape further planning reforms. I remain optimistic of working cooperatively with the New South Wales Government to achieve this.

In closing, I note that Local Government NSW is calling on the New South Wales Government to do three things: jointly undertake master planning of all TOD program precincts, and provide funding and resourcing to councils for this important work; identify suitable mechanisms to fund the infrastructure and jointly develop infrastructure delivery plans for each precinct in the TOD program; and work with local government to urgently establish affordable housing contribution schemes for each precinct in the TOD program, with rates appropriate for each location so that affordable housing contributions are maximised. Chair, I thank you for this opportunity.

The CHAIR: I want to quickly touch on the point you made about the way this commenced. It didn't appear to be in the spirit of cultivating a collaborative relationship, and we've seen that in no uncertain terms in

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the submissions that we've received from councils. You said that you noted the Government's intent to do better. Is that something that your member councils that are impacted by the TOD and the low or medium density—are they voicing that there is improvement, or are they also saying that they are still holding those concerns?

DARRIEA TURLEY: Before I hand over to our CEO, David Reynolds, we have seen a marked improvement, I think. I'm very grateful Minister Paul Scully and Minister Rose Jackson were able to join us for a forum where we connected our councils across the State about housing reform. But, for that, we have seen a greater improvement. We still have concerns about some of the planning issues, and we'd like to further work with the Government around that. Those are about the infrastructure builds that we're concerned about. As we progress, there are issues that our councils—and you've had some of the councils give evidence today about their water and sewerage concerns, about schools and hospitals. But I'll hand over to my CEO to further add comment to that.

DAVID REYNOLDS: Thank you, Darriea, and thank you, Madam Chair, for the chance just to respond a little more deeply. I think you've highlighted our point usefully in your question that the process, I suppose, started abruptly but has improved along the way, in summary terms. It was a matter that the Government decided was a whole-of-government issue, as opposed to an issue that, in a strategic planning sense, was to be prosecuted through the Greater Sydney or Greater Cities Commission, as it became. It became a whole-of-government matter through a Cabinet process—which, in fairness, in practical terms [audio malfunction].

However, once the early announcements and—dare I say—the early reverberation of those announcements have settled and people have been working more deliberately on an individual, council-by-council basis, we feel that that has improved. Certainly the feedback from the councils has quietened down on some of those public pronouncements. Now, we're certainly not of the view that it's been perfected, and we certainly feel that there's much more engagement that needs to be undertaken.

There are very deep and meaningful discussions to be had with councils about ongoing strategic planning across different LGAs [audio malfunction] planning in these places and about really deep and deliberate engagement around the type of infrastructure that's required and how it's going to be properly funded, which sends important price signals about land. We feel that these engagement lessons can be learned and applied there so that the councils and the Government are able to work more closely in partnership about what we all acknowledge is a crisis. We do acknowledge there's a problem to be solved and that councils can play a really vital role in that, on behalf of their communities, and we'd encourage those deeper and more specific conversations to continue.

The Hon. SCOTT FARLOW: Back to that question, isn't this where it should have started, really, from the beginning? Sites should have been identified, councils should have been given the ability to work to their housing targets—or to whatever growth targets may have been provided by the State Government for those precincts—and councils should have been at the helm of designing that in the first instance. Is that something you would agree with?

DARRIEA TURLEY: I think we were very clear in our concerns at the beginning, and we immediately reached out to the Government. For all that, we welcome the fact that we have this parliamentary inquiry. We welcome the ongoing debate and conversations, and making sure that "one size doesn't fit all" is a clear message to the Government about their planning around their TODs.

The Hon. SCOTT FARLOW: With respect, you outlined in your submission that the key risks that you see with the approach in the TOD SEPP are:

- Poor amenity and quality of life for current and future residents
- Strains on existing infrastructure (overcrowding, congestion and service disruption) as well as insufficient and uncertain provision of new infrastructure to support population growth.
- Missed opportunity to provide meaningful and permanent affordable housing in well-located areas.

Do you still have these concerns?

DARRIEA TURLEY: Yes, we do, and that's why we welcome this inquiry. Our message is very clear that we want to work with the Government to make sure that those plannings are being addressed. We had the opportunity the day before to attend a conversation around this. Part of it is that we believe in place-based planning and that we need to create liveable communities. We want to create neighbourhoods. We also don't want to see, as we see a build-up of population, that all of a sudden a school's going to be planned in five years when we know that it will be needed in 12 months. We want to make sure that the Government hears the concerns of local councils and understands that they're on the ground planning in many ways. They have an integrated planning system. They understand their population growths. They want to work alongside and with the Government. We welcome that opportunity. We see this as a healthy start towards that. David, did you want to add anything else to that?

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DAVID REYNOLDS: I think we still hold those concerns as issues that we won't shy away from calling out the need to do well through the entire process. We really want to work collaboratively to do that and not be obstructionist about it. If there is an issue to be called out on behalf of councils, as there has been from the start of this debate, and the calling out of those issues has assisted the engagement between the Government and the councils, we see that as a really valuable role to keep playing. Clearly the scale of the undertaking the Government has commenced is unprecedented. The scale of the challenge that presents around infrastructure and community planning is therefore also unprecedented. We think there are generational conversations around proper planning for community infrastructure so that we're not, for example, just building homes but we're making sure they are well supported by schools, by open space and by appropriate transport connections.

We do acknowledge that one of the premises of TOD precincts is that they are near bulk public transport connections, but that doesn't serve all trips. There will still be need to improve the State road network. There will still be need for local road networks to complement what has been put in place or has been delivered already. Let's not forget the gaps left in the essential works list. If we're really trying to do this well—and doing it well means that we're providing certainty of environment for the private sector to do a large amount of work here—the price signals around contributions and around the provision of good infrastructure need to be clear. They don't need to be lazy taxes, but they need to be amounts that are well considered and that are providing good amenity for communities. In our submission, that continues to mean things like not just collecting for land for libraries, but actually collecting to build for libraries. We don't want to leave social deficits in our wake in the endeavour to provide a much-needed primary social outcome around housing; we want to make sure we're building communities as well. The issues that have been called out are still really relevant. We'll keep calling them out, but it's a work in progress.

The Hon. SCOTT FARLOW: You've also outlined in your submission how the one-size-fits-all approach effectively leaves houses potentially on the table. You've talked about master planning and how that can have higher yield, and you've referenced Canterbury-Bankstown in particular. I'll pick up on the example that Canterbury-Bankstown outlined to the department of this approach and how, with dwelling yield for a site, it could create approximately 468 additional dwellings. Yet, if you were to apply council's place-based master planning approach—where you consolidate sites and you also have maybe higher sites somewhere, lower sites in other precincts and public space and amenity—you can actually get 715 additional dwellings. I'm just interested in your perspectives around the benefits of that master planning approach and the dangers we potentially have in this TOD SEPP that we could actually be working against what we all want to achieve, which is additional homes.

DARRIEA TURLEY: David, do you want to respond to that?

DAVID REYNOLDS: I think the question probably calls out part of the answer, but I think that's what we're seeing in practice. I think we've seen the announcement of the TOD precincts early, and we have seen government do their work to get zonings to a point. What we understand is happening more in the local conversations, which have to be done sensitively, is that engagement is happening with councils. You've seen that in some of the deferrals that have happened with the implementation dates around some of that more locally sensitive and locally specific master planning. I know PIA has called this out, and I know others have called this out.

Despite the fact that the Government has a very deliberate timeline, and we understand the implication and application of the housing accord, there is an opportunity still to master plan and to do this well, and we hope that those positive discussions with councils continue because they go to exactly the capacity questions you're talking about. They go to the issue of whether there's a better local outcome that can be achieved that potentially, in many places, gets a higher yield but that higher yield is able to be done more sensitively in relation to the environment, in relation to supporting amenity, and in relation to supporting infrastructure and services. The Canterbury-Bankstown example is one—and no doubt there will be others as these controls unfold—where nuanced local application of master planned outcomes still preserves the strategic intent of housing delivery but does it in a way that actually builds community in a positive sense.

The Hon. SCOTT FARLOW: Mr Reynolds, shouldn't that have been an opportunity afforded to all your members?

DAVID REYNOLDS: Darriea, I'm happy to answer that one. We have come from an environment in local government under previous State governments where there were sizeable strategic planning frameworks—so working from region plans through district plans down through local strategic planning statements and housing strategies where that opportunity was there for councils to do that. The current Government has taken a different approach about needing to shift the dial substantially on the delivery of housing, in cooperation with the other States and the Federal Government. In that environment the Government has determined its policies.

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We've been public and on the record about our views around that, and we've called for deeper engagement. If we were starting with a blank slate, yes, of course everyone would have preferred broad engagement at the commencement. However, the position of the Government was to press on. We appreciate that they have named the precincts and have been working very closely with councils since that time. So we do appreciate that effort. Whilst, in a technically perfect sense, we might have departed from that script, there is still the ability to do good planning in cooperation between different levels of government, including the private sector, and for it to be funded and delivered well.

The Hon. ANTHONY D'ADAM: Isn't it fair to say, though, that the reason why the Government has taken this step is that the approach of councils in relation to master planning just hasn't delivered and that there is a sense of urgency? What do you say to that issue around urgency?

DAVID REYNOLDS: I'll keep going, Darriea, if that's all right with you. I think it's a matter that the Government is entitled to reach a view over. I think if we look at the record of councils working under prior strategic frameworks to housing targets set by the then government, councils were applying substantial efforts to do that and, in many instances, had rezoned capacity for more dwellings than their housing targets called for, but we all acknowledge that the on-the-ground delivery needed to come through as well.

This Government, like the last Government, has worked hard on improving certification processes, improving development approval processes, and we would call for those efforts to continue. We would also call for good ongoing engagement with the private sector, since we know that—the councils themselves, whilst they have a role in regulation and determining portions of the zoning process before it's referred to the State Government for finalisation, councils don't hold all of the levers in terms of housing delivery, so we would continue to call for positive work there. Darriea, I don't know if you want to respond further to that in a policy sense.

DARRIEA TURLEY: No, I think you've covered that for us, thank you.

The Hon. SCOTT FARLOW: To that point—and, Councillor Turley, you raised it at the beginning as well—in terms of housing targets and what council can actually control, so to speak, council might be able to control how much you zone for. Council may be able to control potentially how much you approve that might come to council, but actually delivering the homes is not something that council has within its bailiwick. What do you think would be a better measure for councils to be able to determine their willingness to be able to assist in addressing the housing crisis?

DARRIEA TURLEY: I think you're right. I think, for our local government areas, they don't have the control on what's being built. The research has been there. KPMG have given good research about how many homes have been approved and how many dwellings have been approved but not built. I think the Government is challenged by that—about how they manage the market and how they manage those developments. I know that there is an inquiry into zombie DAs coming up, but there is this complete frustration by councils about their planning zones when they see that the reality is that they don't build the homes. Yet they are the ones that quite often come under attack. For all that, I think it would be an interesting conversation about how we actually look at and address those issues about DAs coming to fruition.

The Hon. SCOTT FARLOW: If I could ask, on notice, if you could provide us with a copy of that report that you reference. That would be helpful as well.

DARRIEA TURLEY: Yes. Sorry, I think it was "Housing product crisis deepens as new homes are stalled," by KPMG. We'll provide a copy of that report.

The Hon. ANTHONY D'ADAM: Can I pick up on that? Is it your submission then that, really, the planning system is not the reason for the housing crisis and that, ultimately, it is not a problem with planning and planning controls; it is a problem with developers bringing properties onto the market? Is that your contention, or do you say that there is a component of the planning system that needs to be reformed in order to address the crisis?

DARRIEA TURLEY: I think that it's an element. I don't think it's the only issue, but I think there is an element there that, while we focus on local government and while we focus about how State and local government work together and we see that improving, there is that element about how we don't build these homes. The research is saying that, although the DAs are being approved, there is an element of housing stock that is not being built. In fact, I had this conversation recently that we are seeing houses or apartment buildings in one particular suburb that was built but that nobody has moved into. We don't know why; I've asked some questions about that. But I think, for all of it, it's an element that the Government needs to consider as well.

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The Hon. SCOTT FARLOW: Can I put to you the heritage question? You raise in your submission the concerns that many councils have in terms of the application of heritage within these zones. You outline quite a good example with my favourite station, Teralba, that's been chosen as part of this, and the Teralba Heritage Conservation Area and the application that was undertaken by Lake Macquarie council in their local environmental plan, and actually changing some of the controls to respect the heritage, reducing building heights from 10 metres to 8.5 metres. Now you are going to have building heights of 21 metres in that area. How will those two policies—which we heard from planning, today, will co-exist, so to speak—actually be worked out, from your perspective?

DARRIEA TURLEY: I'm going to ask Mr Reynolds to respond to that.

DAVID REYNOLDS: Thank you, Darriea. I think this is where we come back to the fact that it shouldn't be a one-size-fits-all policy application. The policy should set the broad control and then there should be the capacity for each council to have nuanced local conversations about how to manage and work with their heritage restrictions or heritage opportunities well. I think no council wants to see heritage be the reason that communities atrophy and shrink and that opportunity is lost because of it. But councils all wish to see heritage be a benefit to their community and heritage to be a positive gain as we move forward.

I think the answer to these questions is in nuanced and deliberate local conversations which are intentional at a level below a metropolitan or statewide policy. We would encourage further engagement on those particular points because we really do believe there are good opportunities for heritage to be used as a positive gain in future conversations as opposed to an impediment. But it has to be treated respectfully. It has to be acknowledged and preserved in helpful ways, as opposed to just being, potentially, a very black and white yes/no response. In some instances, for particular matters of heritage, it may be that response, but that's not appropriate in all circumstances necessarily. We would really call out the need for nuanced local discussions on those matters.

The Hon. SCOTT FARLOW: But, Mr Reynolds, with respect, the nuanced local discussions have come to an end there in Teralba, because the SEPP applies in Teralba. I don't see that Lake Macquarie council are seeking to change their position in terms of the heritage conservation areas. There's been no report of that. So where does it end in terms of the application of the proposal? Is it just going to be left up to the courts when somebody brings a DA along?

DAVID REYNOLDS: We all know that matters ending up in court is not the preferred outcome. That incurs great cost for councils on behalf of their community and also frustrates the development sector. I'm happy to take on notice that particular circumstance. I acknowledge the issue you're calling out. I acknowledge that it's a matter that, if we can solve it generally, will provide some clarity around these issues for councils and proponents of development. Where we don't want to end up is in a cycle of frustration and uncertainty, and lose social value or community resources because of that. I very much acknowledge the issue that you're calling out. This particular instance about Teralba may well be one that crystallises an example of a thing that we should really try and solve more positively. But I am happy to come back further on that one with a little more detail.

The CHAIR: We have come to the end of our session. Thank you very much, both of you, for giving your time and your evidence today. The secretariat will be in contact with anything taken on notice.

(The witnesses withdrew.)

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Dr PHILIP OLDFIELD, Head of School of the Built Environment and Professor of Architecture, UNSW Sydney, affirmed and examined

Dr NICOLE COOK, Senior Lecturer, Geography and Sustainability, University of Wollongong, before the Committee via videoconference, affirmed and examined

Dr SHANAKA HERATH, Senior Lecturer, Urban Economics and Course Director, Planning, University of Technology Sydney, affirmed and examined

Dr SOPHIE-MAY KERR, Research Associate, City Futures Research Centre, UNSW Sydney, affirmed and examined

The CHAIR: Thank you very much for making the time today to give evidence. Would anyone like to commence by making a short opening statement?

SOPHIE-MAY KERR: Thank you for the opportunity to provide evidence. My research focuses on residents' experiences of their apartment homes and high-density neighbourhoods, with a particular focus on families with children. What this work demonstrates is that, alongside supply of well-located, high-density housing, if we want the compact city model to be a success, greater consideration of apartment design, quality and resident experiences is needed.

The latest census in New South Wales reveals that over 150,000 children are living in apartments, and roughly 60 per cent of these are rental households. In Greater Sydney, one in four apartments are home to families with children, and in some local government areas this is as high as one in two. Although families comprise a significant and growing portion of apartment residents, the current planning framework and market-led development model has resulted in key challenges for families with children, including spatial constraints within individual dwellings—in particular, a shortage of affordable three- and four-bedroom apartments; inadequate storage; poor acoustic performance, leading to tensions between neighbours; a lack of family-friendly communal space; and health and wellbeing concerns.

The research shows that despite perceived benefits to living in apartments, many families find it difficult to envision living in apartments over the longer term. Either families move away from the city, with productivity and sustainability implications, or they remain living in unsuitable dwellings with compromised wellbeing and ability to feel at home. Without appropriate strategic planning and regulation, we risk the delivery of more poor-quality apartments that fail to address the needs of a significant portion of residents.

Responding to this challenge could look like targets within the TOD program to ensure a greater proportion of family-friendly apartments; direct provision of government or non-market family-friendly apartment supply, demonstrating design principles that can be replicated by the private sector; updates to the Housing SEPP and Apartment Design Guide to ensure family-friendly design principles are taken into account—and I note the draft Design and Place SEPP from 2021, which provides some work towards this, as well as the healthy high-density living for families guide, which is soon to be launched by Western Sydney Local Health District, as a really good starting point.

It's also important to ensure that local councils retain the ability to set more ambitious targets to facilitate delivery of family-friendly apartment stock in response to local need, and we can look to Canada Bay and the Hills LEPs for examples of this currently in place; and, finally, ensuring that family-friendly neighbourhood amenities keep pace with housing growth, so things like green space, social infrastructure, safe active mobility routes, child care and schools as being really critical. As we prioritise density, more residents will live in apartments across all different life stages, and it's then vital that we ensure a short-term focus on supply does not compromise long-term livability for future generations that will inherit this stock.

SHANAKA HERATH: Thank you for the invitation to appear in front of this important inquiry. My research focuses on housing preferences, housing affordability and urban amenity provision. Our research shows that more than 50 per cent of apartments in the Liverpool CBD are occupied by families with children. However, 76 per cent of apartments are two-bedroom. There is a lack of large dwellings suitable for families in our town centres. In addition, though only 2 per cent of dwellings are occupied by multiple-family households in Australia, 48 per cent of severely crowded dwellings are occupied by multiple-family households. Indigenous Australians and Pacific and some Asian cultures are over-represented in overcrowded dwellings.

We've heard of intergenerational living and extended family living, but there is a shortage of large dwellings to accommodate these different family types. Mid-rise developments under the TOD program will contribute to a diverse dwelling stock. However, we need more diversity, including larger apartments, to improve resident wellbeing and economic participation and productivity. Mandating a certain percentage to be

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three-bedroom apartments in developments is a step in the right direction. For instance, the Hills shire requires 20 per cent of dwellings in a development to be three-bedroom or larger.

My second point relates to the precinct boundary. The 400-metre proximity from the station should not be measured using straight-line distance—that is, as the crow flies. Since residents will be walking to access the stations, walking distance represents a more realistic approach. Our research shows different proximity metrics, such as straight-line distance, road distance and travel-time related distance, lead to very different proximity effects. With the honourable Chair's permission, I'm happy to table this research paper.

My next point is in relation to the small infrastructure incentives. The Hills shire, Blacktown and Parramatta LGAs represent almost 25 per cent of the total housing target of the TOD program. Under the TOD provisions, the onus is on the councils to provide community infrastructure for tier 2 precincts. Currently, \$200 million is available in incentives to councils to build small local infrastructure only if they exceed their housing targets. This assistance should be based on the target dwelling numbers; otherwise, we are setting them up for failure. There will be more dwellings without adequate local amenities and services.

PHILIP OLDFIELD: Good afternoon. My research is broadly in the space of buildings and sustainability, with a particular focus on high-rise and high-density architecture. In terms of the TOD SEPP, I believe it makes a huge amount of sense to deliver high-density housing provision in the transit hubs. My concern comes from the type and quality of apartments we will build. It's important to recognise that the apartments we build in the next few years could last and still be standing well into the twenty-second century. Our children's children could live in them. As such, it is vital that we deliver apartments that meet current needs but also future generations'.

I've also been involved in some research that examines the desires of families with children in apartments in New South Wales with one of my colleagues here. We found that developers prefer one- and two-bedroom apartments and standardised layouts, primarily to meet the needs of investor purchases. In contrast, parents of children desire a more diverse range of apartment layouts in terms of privacy, supervision and shared spaces, notably influenced by the age of children. For instance, many parents desired an apartment with an entrance lobby, while developers preferred a more open-plan layout. That's only a small thing but it adds to the growing evidence that apartments are rarely designed with families with children in mind.

I also want to comment on the fact that the TOD reforms note that all apartments built under these changes are required to align with the New South Wales *Apartment Design Guide*, also known as the ADG and formerly known as SEPP 65. I want to stress this is a positive thing. In the last few years research by RMIT and the University of Western Australia has shown that the ADG achieves more health-promoting design criteria than apartment policies in other States and has resulted in residents having a more positive perception of their apartments. The authors note, "Any weakening of SEPP 65"—and by this, they mean the ADG—"through the removal of requirements could be detrimental to the wellbeing of apartment residents." However, the ADG itself is now 10 years old. There is the opportunity to revise the ADG with our recently accumulated knowledge and evidence to ensure provisions are in place to better support the next generation of apartments in New South Wales including, for instance, better provision of family-friendly apartments.

The CHAIR: Dr Cook, do you have an opening statement?

NICOLE COOK: I do. It'll be quite quick. As I mentioned, I'm a senior lecturer in geography and sustainability at the University of Wollongong. My research specialisations, as with many of the researchers and my colleagues here today, is in housing and also urban studies, and it includes a focus on higher density housing from lots of different perspectives over about a decade. Housing supply is critical in ensuring affordable homes; it's certainly a key plank of affordability for residents in New South Wales. The Transit Oriented Development Strategy is a really significant initiative by the New South Wales Government to support that outcome but I also have some concerns.

I think there are challenges in delivering community-supported higher density housing. One of the major barriers observed in studies that I've undertaken, particularly in Melbourne, is the mismatch between local government and statutory planning instruments. I noticed that was a feature of the earlier session today as well. I think there is some risk that this mismatch prevails in the New South Wales Government's proposed TOD strategy, where the State Environmental Planning Policy (Housing) 2021, known as the Housing SEPP, and the ADG—the apartment design guidelines—supersede local government Development Control Plans. I would just focus particularly on chapter 4, section 149 of the Housing SEPP to see where that is set up.

Without stronger alignment between these instruments—the DCPs, the SEPP and the ADG—I think there is the potential for the development process to become mired in conflict that we need to be aware of. Second, there are some gaps in statutory controls regarding place and apartment design, particularly in enhancing canopy

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cover and thermal performance of apartments, and I can point to those areas as well. Third—and just coming to the topic of family-friendly apartments—New South Wales Government master plans and associated DCPs, or the controls that are placed in relation to those master plans, for the eight priority growth areas should be informed by place-based analysis of families in apartments in those town centres. By that I mean working out statistically at the moment in some of those areas what proportion of those apartments is occupied by families. As Shanaka just mentioned, in our research for Liverpool town centre it was around 50 per cent of apartments that were occupied by families with children in that town centre.

This actually resulted in modifications to the town centre DCP in June 2024 in Liverpool that now requires, along with the examples that Sophie-May mentioned, 20 per cent three-bedroom homes in new apartment buildings. Finally, there's the potential for the TOD strategy to achieve affordable housing. This is going to differ between high- and low-value locations. There is the potential to gentrify existing affordable rental in some locations. I think increasing the proportion of affordable housing above 2 per cent may be necessary to offset some of those impacts. Overall, place really matters here and we have to understand the impacts of some of the proposed changes and the existing planning instruments in those localities.

The Hon. SCOTT FARLOW: Thank you all for your evidence. There's a bit of a theme here when it comes to families living in dense communities. The provisions of both TOD programs say nothing about family-friendly apartments or encouraging three-bedroom apartments or any of those provisions whatsoever, whether it's in the tier 1 program and the eight accelerated precincts—seven of which have already been exhibited—or the 37 tier 2 TOD sites. What do you think they should say about this?

SOPHIE-MAY KERR: I think it's a really critical opportunity. As you mentioned, it is a glaring gap when we're looking at the significance of families as a cohort of apartment developments and some of the challenges that we're seeing with existing dwellings and really needing to forecast forward. There's an opportunity to work towards righting that misalignment if there's a greater proportion of larger apartments that are required, whether that comes through the ADG or the SEPP itself or written into some of the specifics of the TOD program. Alongside that, affordability is a really key challenge when we're talking about the delivery of larger apartments.

But there are precedents where councils have required this greater mix. While we're looking at across the State level, larger apartments being three-plus sitting at more around that 10 per cent level. As we've heard, there are councils that have required a greater proportion. So something like 20 or 25 per cent of new apartments being family friendly would align with the numbers that we're seeing currently in that space. Alongside that, there are great opportunities to consider designing for families and really thinking about the people that will be inhabiting these spaces beyond the number of bedrooms. That includes things like the spatial layout, recognition of the importance of soundproofing and storage provisions. All of these things could be written into the ADG in a similar framework as to what we did see proposed in the draft Design and Place SEPP in 2021, which wasn't actualised in policy.

The Hon. SCOTT FARLOW: Are there any other comments?

PHILIP OLDFIELD: I would echo that and say we have a potential template in the Design and Place SEPP, which was canned in 2021, which suggested 20 per cent of apartments in any new development should be family friendly, and by that they mean larger two bedders or three-bedroom units. That's something that has already been consulted on to a large extent. That provides a possible avenue for this gap, which we've all recognised to be addressed. Whether that is something that should be in the TOD SEPP or in the ADG, at what level, I'm not sure.

The CHAIR: We've had frustrations expressed in other inquiries to this Committee about the Design and Place SEPP and what a shame that we haven't rolled that along. Dr Cook, you wanted to contribute?

NICOLE COOK: I was just going to say we've heard a little bit about the importance of evidence-based planning. I think this is just one of those areas where getting more data would be very, very valuable. I have to say, I support my colleagues' comments entirely around 20 per cent minimum. But when we did our study of Liverpool, we were really shocked that—and we had a lot of media attention around that paper—so many people were living in apartments. But I haven't seen a large-scale analysis, particularly of the eight fast-growth areas, of who is currently living in apartments. For instance, in Hornsby, we could get quite detailed information about that. I think there does need to be a stronger policy framework around this.

I also think that we have easily accessible evidence—and Shanaka can explain how to do it—to actually find out who at the moment is living in apartments—what proportion of families—and then to get really much better controls. I think there has to be consideration for that. I would say just one more thing about the apartment design guide. It's very suggestive and even the Housing SEPP says that the ADG has to be considered; it doesn't say that anything in the ADG actually has to be followed. We've got this very permissive space that waters down

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anything that looks like a 20 per cent minimum. So a couple of things around research and tightening up that statutory framework.

The CHAIR: Can I pick up on one thing? You all touch on it but you went to it directly, Dr Cook, in terms of tree canopy. This Committee has heard good and strong evidence about the need for tree canopy from a climate adaptation perspective but also in terms of liveability, along with green space, and that quality of apartment and density dwelling. Can you provide any evidence in relation to any research, your findings or your thoughts on that and how these new provisions provide for canopy and tree cover and green space?

NICOLE COOK: Unfortunately I don't have research on that that I can talk to. But I can talk to my thoughts around the policy that I have looked at. When I look at the ADGs again, in terms of the provision of gardens around apartments and allocation of trees and also of maintaining an urban canopy, I see a lot of suggestions. It doesn't look to me that we're committing as a State to maximising tree canopy—again, looking at the ADGs. This is from a perspective of talking to people. I did a lot of consultation with people in Melbourne around opposition to high-density housing, years ago in an AHURI research project.

Many of the areas that are earmarked in the priority growth areas still have detached dwellings in some parts of those areas. Some of those I know in Sydney have a lot of trees, obviously in the backyards of these larger detached dwellings. We know that those trees are going to be removed and lost in this process. That quality is what brings people to live in those areas. It's a massively important issue in terms of climate change, in terms of developing climate-adapted housing for people which has implications on energy costs down the track. It's also part of what brings people to want to live in areas.

I think if we overlook that question of canopy and if it isn't more clearly prioritised in our planning instruments, we are going to risk having apartments that are not ready for the climate extremes that we're seeing and that will exacerbate health issues. There is a lot of evidence around that. In fact, I would say even in our Liverpool study, we've got examples from a number of households where the thermal performance of their recently built apartments was exacerbating health issues. I think we've got to really keep our eye definitely on the greening aspects of this massive program that's being proposed and has the potential to do so much.

The other thing is the thermal performance. I found extraordinary the statements that were made in 2023, in a September document from the Department of Planning and Environment around the new National Construction Code standards for thermal performance of housing, which is now moving to a seven-star rating in Australia for housing and apartments. And yet the statement that occurs in the Q&A for the department of planning and environment's frequently asked questions on residential building sustainability is—and I'll just read this and then I'll stop, because I'm going on:

We have increased the BASIX thermal performance and energy standards, except for homes in the North Coast climate zone and small apartment buildings of up to 5 storeys anywhere in NSW.

To me, I don't know whether that has been changed since September 2023, but it seems to excuse any apartment buildings of up to five storeys from the NatHERS seven-star rating that the National Construction Code and the Australian Building Codes Board have brought in. So, again, just concerns there around thermal performance, around canopy and what our legislation is actually doing in that space.

The CHAIR: Just on the Liverpool study, is that something that you're able to provide to the Committee? Perhaps it already has been and I'm not aware of it.

The Hon. SCOTT FARLOW: Was that what you tendered, Dr Herath?

SHANAKA HERATH: Not that one, no.

The CHAIR: No, this is about distance, but the Liverpool study.

SHANAKA HERATH: We can take that on notice.

The CHAIR: Thank you very much. Did anybody else want to comment in terms of the canopy, urban tree cover and the current SEPPs that we have in front of us?

SHANAKA HERATH: Maybe I'll add something here. To the point that I mentioned before about the small infrastructure incentives, that's why they are needed—because when we add additional residents, the per capita availability of urban parks reduces. Whenever we add 10 residents, for example, the per capita availability of schools for those residents reduces. Whenever we add one or more residents to certain precincts, we are going to see that amenities' and services' availability will be reduced. That's why it's important that for each development, looking at the building numbers, we should look at providing more infrastructure incentives. If you wait until they meet the targets, it might be too late because, when the planning happens at this stage, the

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delivery will be a few years down the line and the people will have to live without those amenities and services for a while.

The CHAIR: But that doesn't address the removal of existing tree canopy; that's for future or potential reserves. The concern is—and I think Dr Cook went to it—existing trees and the notion that under this development regime, we will be removing existing tree canopy to provide for redevelopment and denser development, and the impacts of that. But Dr Cook has obviously pointed to the fact that these are the things that attract people to these areas.

SOPHIE-MAY KERR: I think the only other thing to add on that is just that we see within apartment communities that have that reduced private space that there's increasingly, then, that reliance on those public facilities. That's the case for families as well as broader apartment residents, so it's really critical to think not just about the homes themselves but those surrounding communities and whether they will meet those diverse needs of people who don't necessarily have that backyard themselves.

The Hon. SCOTT FARLOW: Can I pick up on that point. You talked about it in your opening statement, I think Dr Herath was touching on it and we've certainly heard it throughout the inquiry. One of the challenges with this SEPP and this application is it only looks at the upzoning of dwellings. It doesn't identify any new open space, for instance. Some of the councils have submitted to us that because of the increase in densities in residential blocks, you're actually looking at an added cost to council if they are to procure open space, because it's been rezoned to six storeys now and so it goes at a higher cost. To Dr Herath's point, you might be actually losing that opportunity, so to speak. What do you think should have happened, or what do you think the Committee should recommend, in terms of open space within these TOD precincts and what the Government should do?

SOPHIE-MAY KERR: I'm probably not best placed to answer that one.

The Hon. SCOTT FARLOW: Dr Herath, have you got any idea?

SHANAKA HERATH: Yes—again, drawing on my opening statement, I think it's really important that rather than relying on the city councils to provide those extra amenities with the addition of new residents to areas, the New South Wales Government should proactively provide infrastructure in those areas. Otherwise, if those people have to live in local areas without amenities, with working from home being very prevalent these days, it will have an impact on wellbeing as well as productivity. That's why it's important to provide infrastructure funding up-front to these areas. I know about \$520 million has been dedicated for the tier 1 precincts, but a lot of very large precincts in tier 2 areas haven't been provided that support. So that's, I think, crucial.

The Hon. SCOTT FARLOW: So there are zero dollars on the table for any infrastructure for those 37 tier 2 precincts. You would have thought that, if this program was in place and we wanted to encourage high-quality, denser communities where families could live, there would have been infrastructure funding there for open space and other improvements to community amenity.

SHANAKA HERATH: That's right. At the moment it's on a completion basis: If you meet the target, they'll provide the incentives. That might not work, in my opinion, because when there are already a large number of dwellings allocated to these locations, they'll certainly need—these are essentials for these areas, even before looking at whether they meet the target or not.

The Hon. SCOTT FARLOW: That's only \$200 million for every council across New South Wales.

SHANAKA HERATH: That's right. For those 31 tier—

The Hon. SCOTT FARLOW: That's not even just for those areas. That \$200 million is for every council across New South Wales if they meet or beat their housing target.

The Hon. PETER PRIMROSE: Taking up the points about green spaces, I understand that your research for the Department of Education looked at the sharing and potential benefits of sharing green spaces. I was wondering if you could please talk to that and give us your views.

SHANAKA HERATH: We were initially very surprised when we looked at the data that were provided by the education department. There was a considerable uptake of this program: A lot of schools were willingly taking that on because they wanted to share their school spaces with the local community. The main obstacle I would say would be the maintenance cost and some schools had concerns about security issues, but a lot of work has been put into these areas and now even more schools have come on board with the program. We've looked at some international case studies as well. Since we don't have much land left in co-urban areas, this has been acknowledged as a very, very good strategy in terms of improving social benefits and health benefits in local areas. Especially in cities like Sydney, we have hardly any land left for new urban parks, so the alternative would

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be to use these existing green areas to the benefit of the entire community. I'll again take that on notice and I'll provide the final report of that project.

The Hon. JACQUI MUNRO: I have a question about the way that the department has decided to make their decisions about which areas are going to have a significant increase in density, and whether any of you had comment about the rigour of that process and whether the use of data has been effectively managed and utilised. Have you done any of your own analysis, for example, on the way that the sites were actually picked?

PHILIP OLDFIELD: I have not.

SHANAKA HERATH: In that project, we had access to the original data from the Department of Education. Our understanding was that the schools were invited to be on board with the program. There were some information sessions et cetera and then those schools who consented were invited to be being on board. Then subsequent information was provided on the obstacles like the security concerns, cleaning, management and governance arrangements and costs—how to kind of share the cost of cleaning et cetera. Then, subsequently, they had other forums and feedback sessions to understand if the program had worked well, what to do next to improve the program et cetera. In terms of the transparency, I think that the website for that program provides a lot of information and it's quite transparent in that way.

The Hon. JACQUI MUNRO: That's specifically for the open space sharing?

SHANAKA HERATH: The Share Our Space program of the education department.

The Hon. JACQUI MUNRO: When was that commenced?

SHANAKA HERATH: I can't remember the exact date. I'll take that on notice. It has been a few years but more and more schools came on board. That's why we think it was a success and we would actually promote and encourage other schools to—

The Hon. JACQUI MUNRO: But that was before the TOD announcements were made.

SHANAKA HERATH: That's right, yes.

The Hon. JACQUI MUNRO: This is just sort of feeding into what is the new plan.

SHANAKA HERATH: Yes.

The Hon. JACQUI MUNRO: I guess I'm asking how the sites were picked in terms of the actual TOD locations. For example, Dr Kerr, was there any analysis done at City Futures?

SOPHIE-MAY KERR: I haven't done any work in that space personally.

The Hon. SCOTT FARLOW: With respect to the question on family-friendly apartments, do we have data on how many family-friendly apartments there are in Sydney or New South Wales at the moment?

SOPHIE-MAY KERR: Not that I'm aware of. There are various different metrics that you could look at if you were looking at larger apartments, but there's certainly not a family-friendly apartment guideline that exists at this point of time.

The Hon. SCOTT FARLOW: Do we have data on how many three-bedroom apartments there are in New South Wales or the like? Is that something that's available?

PHILIP OLDFIELD: I believe it changes per LGA as well. I know the ABC did some study on this and they found as low as 6 per cent in some local government areas and, higher, up to 15, 20 per cent in others. It's dispersed in a non-aligned manner. I believe Dr Kerr found 11 per cent in some LGAs. It differs in different places.

SOPHIE-MAY KERR: Certainly, the capability exists within the census data for that, based on different locations. Nicole was alluding to the work that Shanaka did in Liverpool that was a really place-based example of breaking down what does the apartment stock look like, what are the demographics of the area and how do they align. So that can be explored across the State.

The Hon. SCOTT FARLOW: It takes work, though, I take it. This is your work. This is what you do for a living.

SHANAKA HERATH: In Liverpool it was 15 per cent, the three-bedroom apartments.

The Hon. SCOTT FARLOW: Fifteen per cent? So 50 per cent of people are families living in apartments and only 15 per cent of those being three-bedroom?

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SHANAKA HERATH: That's right. As Dr Cook and Dr Kerr mentioned, we were not only focusing on the number of bedrooms. There were a lot of design aspects, storage availability. Some of them were content with their arrangements. But in terms of bedroom numbers alone, 15 per cent was the number that we got for three-bedrooms.

PHILIP OLDFIELD: From what we know across the State, a quarter of all apartments are habited by families with children. So that's one in four, and one in five across Australia.

The Hon. ANTHONY D'ADAM: Do you have any insight into what drives the differential between LGAs in terms of the proportion of three-bedroom or greater numbers in each LGA? Is there any insight on why one LGA might have 15 per cent and one LGA might have 6 per cent?

PHILIP OLDFIELD: I don't. In the work we've done talking to developers, developers told us they preferred to deliver one- and two-bedroom apartments, and they preferred generalness in apartment delivery because there's what investors prefer. That was the feedback we got from developers, but I couldn't tell you why certain LGAs have different ratios of apartment delivery.

The Hon. ANTHONY D'ADAM: Even if you increased or mandated the increase—I think this is the tension that I am trying to grapple with in terms of the evidence on a range of points that has been raised in this session. All these factors drive increased costs, and that obviously then impacts on the profit margin for developers, so their incentive to actually proceed with developments is affected. We then erode our capacity to actually meet the housing targets that we need to deal with the housing crisis. I suppose my real question is this: Is there a model within a private market system that can deliver the kind of quality-of-life benefits that you're trying to direct us towards? Do you think it's possible within the operation of a wholly private market system to deliver those kinds of benefits?

SHANAKA HERATH: If I answer your earlier question about what determines the number of different types or sizes of apartments in LGAs, in our Liverpool paper we cited three reasons as to why the private developers would develop certain types of buildings. The first one was the construction costs, and then profit margin, as you mentioned, and then the built quality and design that would be more profitable for them. In terms of construction costs, what we said in that paper was that, from 2004 to 2018, the cost of construction in New South Wales increased by 52 per cent and we saw a corresponding decline in the apartment size. The apartment size decreased by 20 per cent in New South Wales over that 14 years. We therefore suggested that, with the increase of construction costs, developers increasingly chose to design and build smaller apartments.

The Hon. SCOTT FARLOW: The same model as McDonald's.

SHANAKA HERATH: These kinds of decision-making processes by the private developers would have an impact on the outcome in the end.

The Hon. ANTHONY D'ADAM: That is the market. If we put in regulatory constraints to try to force them, they just do not build. I know it is confronting, maybe, but is there a private market model that can work?

The CHAIR: Am I hearing hints towards a public developer?

PHILIP OLDFIELD: If I look globally—

The CHAIR: Sorry. Dr Cook, did you want to say something?

NICOLE COOK: I'm listening to this and I think the reality is we can see that the market will not be able to deliver this on its own. We have been talking about Liverpool. Liverpool is really struggling to get development to happen despite a very welcoming and permissive development context. One of the reasons that they would say that it's a problem, in addition to the points that Shanaka has already made, is because you could develop—a building is going to cost the same amount to develop in a higher value neighbourhood, so the higher value neighbourhoods will be more attractive. So sometimes places such as Liverpool will struggle to attract development. I think, across a range of measures here that we are talking about, the market on its own isn't going to be able to deliver affordable and climate-adapted apartment stock. So I think we need to look at other suggestions that aren't outrageous.

There are times where there have been public-private partnerships. There are different models that could be developed. We do need to get better at delivering a housing product that is affordable, and affordability and sustainability need to be central from the ground up, from what we are teaching our students in architecture and planning all the way to research and innovation in that space. I know this is not a quick answer and it's not an easy answer, but I think it's taking a step forward, potentially prototyping something to show the market that it is possible or, alternately, looking at public-private partnerships in different ways. I don't think it will be developed in any other format in the current climate. That is my answer. I don't think the market can deliver on its own. We

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need to be more creative and look at examples from the past and innovative ways of financing. I know you're going to ask me what they are. I can't say what they are at this point but, to me, I don't think the market can develop this on its own.

PHILIP OLDFIELD: I was going to say, quite simply, if we look around the world at the best apartments being delivered, they are all being delivered by non-private developers and by non-market. They're being delivered through social housing and government-led housing in places like Vienna, Barcelona and Scandinavia, and they are delivering the highest quality apartment provision. If we look in Australia as well, mechanisms like Nightingale in Melbourne—fantastic housing. One of them's NatHERS is 9.2-star. Remember, the minimum is 6-star, and they delivered 9.2-star. I don't think that the private sector would do that.

The Hon. JACQUI MUNRO: They are in Sydney now as well.

PHILIP OLDFIELD: Yes, of course.

The CHAIR: Dr Kerr, you wanted to add something.

SOPHIE-MAY KERR: I very much agree with the comments that have been made by my colleagues. I think it's a very important tension that you have raised, and we're talking a lot about the need for larger apartments and three-bedroom-plus. There's recent reporting that the median price of a three-bedroom apartment is \$1.3 million in Sydney. We know, alongside this, that we need to be having this conversation about affordable housing. I wanted to share that there are a couple of examples overseas where various jurisdictions have offered incentives to try and encourage the private market to deliver family-friendly apartments, often coupled with affordability targets.

There is an example in Portland, Oregon, which offers a three-bedroom bonus program with floor area ratio bonuses of up to 25 per cent offered for the inclusion of affordable three-bedroom units. In Coquitlam, British Columbia, they looked at a targeted 10 percent minimum of three-bedroom units in projects under rezoning and encouraged three-bedroom-plus units through their rental incentive program. There are models out there that can be explored. I'm not saying that either of those is exactly the right context for the discussion that we're having here, but I think it's an opportunity for the New South Wales Government to investigate some of those mechanisms to try and incentivise the private market to be part of this delivery alongside, as we have heard, the importance of those non-market housing outcomes towards addressing this.

The CHAIR: Thank you very for making the time, all of you, and for your evidence today. The secretariat will be in contact with you about those matters taken on notice. We are very grateful for your time.

(The witnesses withdrew.)

(Luncheon adjournment)

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Professor PETER PHIBBS, Emeritus Professor, Henry Halloran Research Trust, University of Sydney, sworn and examined

Professor CATHY SHERRY, Professor, Macquarie Law School and Executive Member, Smart Green Cities Research Centre, affirmed and examined

Professor BILL RANDOLPH, Professor of Planning, City Futures Research Centre, UNSW Sydney, affirmed and examined

Professor HAZEL EASTHOPE, Professor of Urban Studies, City Futures Research Centre, UNSW Sydney, affirmed and examined

The CHAIR: Thank you all for attending today and making time to give evidence. Would anyone like to make a short opening statement?

PETER PHIBBS: I will. Thanks very much for the opportunity to speak to you today. You've read my submission. I wanted to make three additional points about things that have come up since the submission was made. The first one is around the justification for the TOD program. On the New South Wales Planning website there's a statement, saying we have a housing crisis in New South Wales. I'm sure my colleagues would agree with that statement. One of the things they say is, "We must act now to avoid being a city with no young people."

This worries me. The whole story, if you like, about young people in Sydney began with the New South Wales Productivity Commissioner when, in highlighting the release of a report in February this year, he said, "For every person in their thirties who comes to live in Sydney, two leave. If we don't act now, we could face Sydney becoming known as the city without grandchildren." That issue was picked up by a lot of politicians. Quite a few politicians have raised that issue. As a scholar, I find it unfortunate. The Productivity Commissioner was confused between what we call, in demography, total migration into Greater Sydney and internal migration.

If for every person that arrived two left, we'd actually see a reduction in the number of people in their thirties in Sydney, but a simple scan of a census table shows that's not true. Between 2011 and 2016 the number of people in their thirties in Greater Sydney grew by 12 per cent, and between 2016 and 2021 it grew by 11 per cent. The total number in 2021, according to the bureau, was 831,184 people in their thirties living in Greater Sydney. I think it's unlikely we're going to run out of young people soon. We're probably not going to run out of grandchildren. In fact, my colleague Bill has just told me he's now a grandfather.

The Hon. SCOTT FARLOW: Do they live in Sydney?

BILL RANDOLPH: Not yet.

PETER PHIBBS: One of the issues there is the whole planning thing the public finds difficult. We're going to have a discussion and a debate with the public. The least we can do is provide them with reliable evidence. The other point around the diagnosis of the problem seems to be that the reason we've got such a low output of housing supply in Sydney is a lack of apartment sites, and therefore the way you fix that problem is create more apartment sites. One of the things as a researcher I have been able to get access to is the NSW Planning Portal, which now records all development approvals and all building approvals. When you get an approval for an apartment block, the first thing is you get a development approval from council and then you have to go back, submit your construction drawings and get a building approval. It's a two-step process.

Looking at the Planning Portal, I can see for Greater Sydney 55,000 dwellings made up of approvals of 20 dwellings or more. Most of those would be apartments; some might be small subdivisions but most of them would be apartments. Where there was 55,000 approvals, they have not yet got a building certificate. So the proponent hasn't gone forward to try to get a building certificate and I'd argue the main reason for that is simply because the developments aren't feasible. If you're a developer, you're not going to pay an architect tens of thousands of dollars to do building plans if the thing is not going to make any money. The main problem with housing supply is apartments, except in expensive areas, they're just aren't feasible. They're not feasible not because of a lack of approvals but because construction costs have sky-rocketed and interest rates are now exceedingly high. Builders will be paying—sometimes in mezzanine finance—developers up to 15 per cent finance costs.

My final comment relates to the diverse and well-located home strategy. There's sort of a common view, I think unfortunately, amongst some people and perhaps people in the department that all up-zoning is good. It provides more housing opportunities. What many people fail to acknowledge is that if you do mass up-zoning of residential areas, when you get a detached house and you up-zone it, you make that site much more valuable. The owner of the house thinks everyone coming at them is a developer or a developer in disguise, so they'll want more than the current market value for the house. The mass up-zoning actually increases prices.

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Just this week an article in *The Economist* talks about the miracle of the New Zealand up-zoning experiment. What we've seen in Auckland, okay, it has been good. The extra construction has put downward pressure on rents compared to other comparable New Zealand cities, but there has been no change in housing prices. The economist that was quoted cites the reason is because one of the things that has happened is all that up-zoning has made those houses more expensive. You have a strategy that's trying to make housing cheaper but it's making housing more expensive. It does cause problems. I'd argue a more detailed local plan where you're looking at trying to maybe rezone some industrial land into residential land or limit the number of detached housing areas to areas you think that are feasible or likely to generate a lot of supply will probably be a more effective strategy. That's all I wanted to say.

CATHY SHERRY: I have my notes on my phone. Please don't think I'm reading my texts. It looks bad when you have a mobile phone in front of you, so apologies for this. The point that I really wanted to make, and hopefully this came across in my written submission, is that this is a big issue that is not limited to planning law. It's private property law. One of the real concerns I have—and it's not because I'm a private property lawyer and to a hammer everything looks like a nail—is that the simple reality is every square inch of space is owned by somebody. When we're talking about housing, it's housing that's owned by private citizens. What I see in the TODs and also in planning generally is an almost complete lack of consideration of the private property titles that people will end up owning. Whether you're a home owner or whether you're a tenant, it's a private property title. A lease is a private property title. When we provide people with homes, that's what they're getting. They're getting a private property title, but it's not actually being considered at all in the planning process.

When it comes to high-density development, there's only one kind of property title and that's strata title, which is a Torrens freehold title but that's what everyone is getting. There's very, very little consideration of the reality of strata, the reality of high-density development and large-scale development. We desperately need every single section of government—let me take that back. There are probably some sections of government that don't need to understand strata law, but there are a lot of sections of government that desperately do. For example, I did research in the pandemic on the public health orders—utterly nonsensical for strata schemes, because whoever was drafting them didn't understand the basics of how strata title works.

This is another example in planning. I routinely see the Department of Planning use terms incorrectly. The Department of Planning routinely uses "Torrens" to refer to non-strata title. It's wrong; it's simply wrong. All strata is Torrens title. If you don't even get the basic terminology right, it suggests that you are perhaps not considering it. I apologise; I don't mean to be disrespectful to the Department of Planning but it is a source of frustration. Many of the terms that they're using in the low- to medium-density but also in the TODs, one of the key things for me is they literally have no meaning in private property law. Something like duplex—no-one owns a duplex. You either own a strata or a non-strata title; that's the only option. In relation to the TODs, shop-top housing literally has no meaning in private property law. Nobody owns shop-top housing. What you own is a strata lot inside a strata scheme inside a stratum subdivision. The strata scheme is regulated by the Strata Schemes Management Act and Strata Schemes Development Act obligations to pay levies. The overarching mixed-use development is regulated by a strata or building management statement. There are shared facilities. There are all sorts of costs.

I'm guessing that I've probably lost everyone in the room in relation to that. It's not something people should necessarily be expected to know but the Department of Planning should be expected to know, and sections of government that are involved in this need to understand that complexity. I've just come from an event that we hosted with Macquarie called Building Big Better. The lawyer who structured Wentworth Point spoke—absolutely brilliant presentation. I think people were left probably more than mildly terrified by the legal structure at Wentworth Point, which is a very, very complex community title subdivision. When people buy an apartment, they buy an apartment in a strata scheme governed by an owners' corporation. It's part of an overarching community scheme that has a community association. The community association also has a stratum subdivision in it, which is governed by a building management statement. All of those layers of governance require people to pay money and they also regulate people's private property. The contracts for Wentworth Point, when people buy an apartment there, are over 1,000 pages long—two lever arch folders of legal technicality to explain to them what they are buying.

The complexity of Wentworth Point was largely driven by the fact that the council at the time, Auburn council, refused to take ownership of the roads. This is one of the really big issues in TODs with large complex development. You end up with large complex development because State Government and local councils will not take ownership of open space or roads—what's otherwise been public infrastructure. There's only two options. Somebody has to own every square inch of land as private property—literally every bit of it. It's either owned by the State Government or councils or it's owned by private citizens. They're the only options—the only possibility. If it's not owned by the local council, it's owned by private citizens. In places like Wentworth Point, Breakfast

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Point or Rouse Hill, the parks, roads—everything that you look at that you think is publicly owned property is not. It's as much private property as the lifts and stairwell in a high-rise building.

Private citizens are being made to pay for it. They're being paid to manage very, very complex infrastructure, which they can't manage. They just can't. They can't manage a trigeneration plant or an embedded network; it's not possible. They don't have the skills. They're being made to manage bush areas. They're being made to manage riparian areas on waterways, which used to be publicly owned. The only way they can do that is by engaging professional assistance, which, not surprisingly, is very expensive—getting people to help you run your strata scheme. Anyone who works in strata will tell you there's an absolute dearth of expertise in the area. It's very difficult to get good strata managers. It's very difficult to get good embedded network managers—all those professionals that help you with complex development.

I'll leave it there but just to say one of my biggest concerns with the TODs is that what we are incentivising are extraordinarily complex private property developments that are 100 per cent owned by private citizens, and they have to be paid for and maintained by those private citizens. It does seem to me that we are setting them up for failure. It's just not possible for people to do this and it will not be possible for them to afford it.

The CHAIR: Thank you. Does anybody else want to make a short statement?

BILL RANDOLPH: I'll try to be brief. Thank you very much for inviting all of us to talk to you today. Firstly, the TOD SEPP has a lot going for it, I think, but the critical thing is how is it implemented and managed when it's doing so. It is worth pointing out that the idea of concentrating activity on centres is quite an old one in Sydney. Certainly since the 2005 metro strategy, we've been looking at centres and concentrating development there. We've done research which shows that, since that period, yes, development has concentrated along the corridors and in the centres but at the expense of what we all now call the missing middle. It's quite simple. Developers are finding it more profitable to build high-rise than to build low- or medium-rise properties. In a sense the high-rise corridor concept, the centre concept, has squeezed out the missing middle product. The SEPP offers a chance to address that issue, as well as boost housing supply.

But the first point I'd like to make is: Don't see this as a panacea for solving the housing affordability crisis. Housing affordability and affordable housing are two different things; so is the issue about housing supply and housing affordability. It will not solve the housing affordability problem. Fairly obviously, you will never find a developer to get up in the morning to go out and build as many units or houses as he or she possibly can in order to bring the price down. It won't happen. That leads onto the main core of the issue. If you look at the last 10, 15 years of planning—apartment development and housing development in Sydney—the apartment boom of the last decade and the homebuyer boom just after the COVID outbreak have shown that the planning system is perfectly capable of delivering quantity. It's the market that doesn't deliver when it doesn't want to. That's the crux of the issue—that is, if you're trying to plan a city and rely on speculative housing booms to deliver, you've got an issue straightaway.

So how do we make it work? I think the whole issue is about risk. The way to make TODs work will be to de-risk the process by a strong government intervention and lead. I think there are three key issues that TODs will face in delivering what we want them to. First is governance. This is about removing risk and uncertainty for developers, the insufficient inter-agency coordination, which has been typical in the past. I think the TOD initiative is trying to deal with that, and the lack of local input. I call this the "who and how" problem of governance. The second one is infrastructure. This has come up time and time again. It relates to the lag between housing development and infrastructure provision; the poor integration of land uses and infrastructure planning; the inadequate financing frameworks, which are constantly coming to the fore; and the poor understanding of what infrastructure is actually required to support the resulting community. All these have been failures in the past. These need to be addressed. It's the what is needed and who pays question.

Thirdly is this whole density issue. That really centres on a lack of trust that the outcomes will match the expectations by those impacted by renewal in terms of affordability, build quality, staging and social displacement. Those things that really need to be addressed—what's delivered and for whom and at what quality? We can talk about those things during the discussion. I would argue—and others have too—that a simple rezone and walk-away, market-led approach will not deliver the outcomes the Government expects or the community wants. How do we address these issues? Government needs to play a leading role. It doesn't need to be heavy handed but it has to be there.

We do have agencies that do this. Landcom is an obvious choice—appropriately staffed, resourced and re-focused. They could act by resuming land at or near existing use values, undertaking site assembly and then supporting the planning implementation, promotion and coordination of the renewal process. Land acquired in this way would be parcelled up with explicit planning requirements and offered to the market for developers to

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tender for the delivery of specific outcomes. In the process, the value created by the rezoning process would be shared between the private sector and the public purse. Landcom have done this—Victoria Park, Thornbury. There are lots of examples of where they've done this in the past. LAHC has experience of tendering out major public housing renewal—Ivanhoe, Waterloo. Elsewhere there are examples: The Urban Land Development Corporation in Brisbane, which was axed, did exactly this, quite successfully. The East Perth Redevelopment Authority has done it. There are numerous examples of how government can play this role to manage and coordinate development.

Finally, about trust—there needs to be a strong local buy-in to each plan. Master planning involving the local council is absolutely critical—I can see this in some of the TOD stage one submissions—but you need to include a voice for the community, an effective one, and that's difficult. That's what the developer industry doesn't want to hear, because it can close down the process. But, unless we do that, we'll get the political pushback and the stop-go renewal process which has bedevilled development in Sydney for so many years. The social licence has to be one which cuts both ways. I'll stop there and hand on to my colleague.

HAZEL EASTHOPE: Thanks, everyone, for the opportunity to speak today. There was a lot that I could talk about, but I've chosen to focus on my two areas of research specialisation, which are how people create a sense of home in their housing, and strata title development. I have a few brief comments on those. The TOD SEPP talks about the importance of "creating more and new affordable homes". To do this, we need to consider housing supply and we need to consider what it means to create homes. In both cases I think we need to take a long-term view.

First, on homes, making the creation of homes, rather than just dwelling targets, the primary focus is going to be absolutely central to getting the social licence that is necessary to make this TOD SEPP a success. This is the local buy-in that Bill mentioned. There's a lot of different factors involved in delivering good quality apartment homes and neighbourhoods, and we can talk about those in the discussion. But an important piece to the puzzle is understanding how apartment development is different to house development, which is what Cathy was talking about. Apartments are not just houses stacked on top of each other. I like to say this, because it's really important. They're physically interdependent; they share walls and services. That means they require collective management. In Australia almost all privately owned apartments are strata titled, which means that they're also collectively owned by multiple people at the same time, which brings complexities in management as well.

Bigger buildings are typically more complex and hence more risky and more costly to manage. Those risks and costs are ultimately not borne by developers; they're borne by property owners of individual units. My research centre recently published a report on apartment purchaser decisions of owner-occupiers in New South Wales, which sees this reflected in that market. In particular, the most attractive building form for the people that we surveyed, who were owner-occupiers who'd recently bought apartments in New South Wales, was medium-rise buildings with fewer than 20 units. The reason that was given for that being the most attractive form was "greater sense of community, smaller strata schemes being easier to manage and less big ticket items to maintain, like lifts and pools". That also has implications for local services and communal spaces and whether those will be provided within buildings or within the surrounding neighbourhood, and whether they're going to be owned by individual private citizens or by the local government or State government.

Second, thinking about longer term supply, the fact that strata properties are owned by multiple owners means that building strata properties is going to lead to further land fragmentation. If we're talking about urban renewal, we're talking about collecting bits of land together in order to redevelop them. That means it's going to be more difficult to replace those buildings later. We need to give serious thought to what's going to happen to the new strata developments that we're building now in 50 years when they need to be upgraded.

For example, are they being built in such a way that they can be upgraded in place? Can we upgrade the existing buildings without demolishing and rebuilding? Or should we be prioritising buildings under single ownership—for example, build-to-rent—or social and affordable housing in high-value locations where we know that urban renewal in the future is going to be likely, like near train stations. Just to summarise my argument, we need to ensure that any discussion about housing supply is about the long-term supply of homes that people want to live in, over and above dwelling targets, and we need to understand the implications of strata ownership on liveability, including the management and maintenance of buildings into the long term, and on future urban renewal.

The Hon. SCOTT FARLOW: Thank you all for being here, and I'll pick up that segue from your last point in terms of the future. Professor Phibbs, in your submission you outlined how, in a sense, there might be this perception that when people see a freestanding home next to a train station, that's bad. But you make the point that, potentially, that could be for future development. If you have a six-storey property next to that station, in

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50 years time we might go past and look at that six-storey property and say, "How did that come about?" I'm interested in your views as to whether these changes hobble our ability to develop into the future.

PETER PHIBBS: Yes, I think that could be a real issue. It comes about when you try to set a standard of six storeys across such a diverse housing market. In some areas you want more than six storeys, and in other areas you want less than six. But the job of the planner is not to look at what's going to happen in the next 10 years: You're thinking about what's going to happen in the next 50 years. Sydney is going to keep growing; it's a global city. So you've got to be careful you don't sterilise future opportunities by putting in a smaller development than, really, you'd want—to think about what will be appropriate in 50 years time.

In my submission I give a little photo of a two-storey apartment block in Burwood next to a 12-storey building. You can actually sterilise the opportunity, particularly if it's strataed. If you can't get 75 per cent of the people to agree to sell, you're stuck with a two-storey building in an area that had a lot more potential. Your detached home almost creates, amongst economists, apoplexy when they see it next to a train station, but you're actually land-banking for the future. The worst thing you can do is go and put 10 townhouses—especially if they're strataed—next to that train station because you think you're increasing density. When it comes to the crunch in 10 or 20 years time, when you want to put an apartment block there, you can't get access to the site.

So trying to think ahead—and we're not talking about the political cycle. We're not talking about 10 years; we're talking about 50 or 70 years. You've really got to see some opportunities from saving some sites for future high-density development, and we just see how we sterilise opportunities if we go too low, too early. I think trying to think about that land-banking space is a pretty important strategy for thinking about how you're going to plan your city.

The Hon. SCOTT FARLOW: Does anyone else want to comment on that?

HAZEL EASTHOPE: Picking up on my introductory comments, I completely agree with Professor Phibbs on his points, but I think that the strata title apartment and the detached house are not the only two options that we have available to us. We have the single-owned apartment building, under a single ownership, and we also have a fixed-term lease of land.

The Hon. SCOTT FARLOW: And that goes back to your point, effectively, in terms of either being government led or being build to rent or the like. There are different models that could be considered as well.

CATHY SHERRY: I just wanted to quickly add one thing to Peter's point: If we're talking about sterilising land, a single strata scheme is child's play in comparison to the large-scale developments that we're doing. You can redevelop that with 75 per cent agreement. The legislation definitely needs some work, but if you've got a large stratum subdivision or community scheme—so let's take Wentworth Point, if it ever is redeveloped. Maybe it's developed to the nth degree, but it's a community scheme. To redevelop that, you need 100 per cent agreement of every single individual owner and every association—so they're the bodies corporate, the community associations, the neighbourhood associations, the strata's owners corporation, every mortgagee, every lessee, every judgement creditor and every caveator.

It's what property theorists call the tragedy of the anticommons, where you have too many people with a finger in the pie. It actually comes from the study of post-communist land markets that don't work because every communist party hack and his dog had a finger in the pie. You can't do anything. What happens is this fragmentation. The more you fragment private property titles—which is what these large, complex developments are—the harder it is to ever redevelop because you need to get everyone to agree, and that's basically impossible. You're talking about hundreds, or potentially thousands, of people.

The Hon. SCOTT FARLOW: With respect to some of these changes, Professor Phibbs, you've outlined how this can increase some of the challenges we have with housing affordability as well—that you're potentially going to have, when it comes to freestanding dwellings, families that are looking to upsize in the market and get to that larger property. We've already heard the challenges we face with larger apartment blocks pitted up against developers in that same context because the zoning's already in place. Do you want to outline to the Committee how you see that potentially working and how you see that being a challenge with these reforms?

PETER PHIBBS: The dilemma is—and we're probably talking about the diverse housing strategy more than TODs—if you upzone housing that's currently detached housing for six-storey apartments or four-storey apartments, you essentially increase the value of that housing lot. Depending on the area, you might double its potential value. So if you're the home owner and someone comes along—they want to expand their family and they've come out of an apartment and want to get a detached house—you look at them and think, "You're really a developer in disguise."

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What you want is the full freight for that house because you've now got an increased bundle of property rights. It's possible to put a six-storey apartment block on that house. So it just makes the housing more expensive. The dilemma is you've got to upzone some detached housing for apartments—that's fine. If you do it on a very large scale, you end up trying to make housing cheaper by making it more expensive. For that individual owner, that increase in property rights means that house is now more valuable. I think a lot of people don't understand that point. They just think upzoning is a free kick. It's always going to be helpful. It's got a downside in that it makes things more expensive.

Detached houses are an important part of the market. They're not the only part of the market. They're an important part of the market. If you go and make detached housing much more expensive because of all these additional property rights, the citizens of Sydney aren't going to think that's a great outcome—particularly ones that are trying to get into the detached housing market because that's, for many people, a preferred housing destination in their housing career. I think a lot of people don't understand that. There seems to be this view that if you simply mass increase the property rights for some reason, that will bring the rights down. Why? People don't have to sell it. They can sit there and, if someone doesn't offer enough money, they can wait.

The other thing that happens is—most apartment developments, you've got to buy a couple, sometimes three detached houses. You might have one willing seller that wants to get out or just take the market price. The other two people, you've got to basically dig them out. Developers call this the acquisition premium: You've got to pay more than the market price to get the neighbours out because they had no intention of selling. The acquisition premium in Sydney probably starts about 50 per cent above the current market price. If you've got to get three houses, it's probably more. So you do make property more expensive, and that's a funny way to attack the problem.

The way planners get around that is—one of the things they're trying to do is look at rezoning industrial sites into residential. You don't get that same impact. Or, when they do rezone detached housing sites, they try to pick smaller areas that they know are feasible that will generate apartments and they just go, "This is going to be an apartment lot." People all just basically bail out because they can see the writing's on the wall. If you upzone the entire city, a lot of people won't see apartments coming at them. They'll just sit there and wait.

It just worries me people don't understand how that market works. We'd make apartments cheaper by that strategy, but we'd make detached housing more expensive. I just think you've got to limit the amount of detached housing that you upzone. Make it strategic. Make it focused. I don't think someone in the State government agency that's trying to look at simply dozens and dozens of centres has got, really, any idea about the details or particular locations that would really fire up housing supply in a way that a local planner would.

The Hon. SCOTT FARLOW: Professor Randolph, if I could invite your comment here as well. You outlined before some of your concerns in terms of how that upzoning would necessarily work or where the benefit of that upzoning would be—and then, potentially, the difficulties for a developer in purchasing that property at a much higher value. You of course outlined some alternative models, if you wanted to perhaps expand upon that in this context.

BILL RANDOLPH: Peter is absolutely right. As you will have heard from other witnesses, I think the whole feasibility issue is fundamental to whether or not the TOD SEPP will be successful in its aims. I think the critical issue here is how much value is created through the rezoning process. I, for one, would argue that we need to be quite transparent about this, and councils need to know what they're doing or how much value they're creating when they rezone. Why not? It's a public decision. I think understanding the whole feasibility conundrum of the TODs would be fundamental to making them work properly. In terms of the risks that developers entail when they develop something, yes, of course we know it's a very risky business. You can make a motza or you can lose your shirt. We've done research recently which shows that very clearly by looking at feasibilities across 1,200 apartment blocks in Sydney in the last decade or so. Quite clearly, there are some losers and some real winners there.

But I think in terms of the proposition that a government agency should be in a position to resume land at or near existing use value—which is what the proposition is, perhaps with a premium—to ensure that there's a bit of value-sharing for the original landowner and then amalgamating sites and doing the hard work, if you like, that the development industry has to do, which is the sort of thing that Peter is talking about, to put those sites together and then putting it back into the market at an appropriate price to encourage development could be a way in which you manage that process. You iron out the risks for the developer at the end of the day—and, as I said, there are examples of how that has worked.

The important point there is if you de-risk, you can expect a lower hurdle rate for the developer to then say, "Well, how much do we need to make on this?" "There's no risk associated with it. You've got a plan. We're asking you to develop with this envelope. Go away and make it work." That's one way in which you can make the TOD much more planned and probably will deliver what you're looking for. We know there are affordable housing

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additions or bonuses to put in there, the sort of 30 per cent uplift. All these things can be worked out by the council, with the developers involved, and be quite explicit about who's getting what share of that uplift.

Then you get into the issue of infrastructure, payments and all the rest of it, which of course cause developers all sorts of problems. We know they don't like them. We know they push back very hard on those issues. I think if you have a rational—I use that word; I'm not sure I can use that word in relation to the housing market. In a managed process, you would start to find a better outcome because you'd be able to determine what gets built where, pretty much, and specify and build that into the land value that you're handing over to the developer to say, "Go away and build. This is what you do."

The Hon. ANTHONY D'ADAM: How would you establish the acquisition premium?

BILL RANDOLPH: That's a very good question.

The Hon. ANTHONY D'ADAM: What would be the approach to how you would do that?

BILL RANDOLPH: Peter is talking about houses. Clearly, when you're repurposing a whole town centre, you've got commercial premises and all sorts of premises as well as open space, because you're going to need that. The Valuer General determines the value of the property that I'm lucky enough to own, and I have a land value which is quite clearly stated on my rates bill. There's a baseline there. The premium itself could be a negotiated one. Peter suggests it's a 50 per cent premium. That may be correct. There are some very good examples now out there that colleagues of mine have been looking at in research, looking at collective sales of house owners up on the north-west metro corridor, which evidence from there could show you what sort of premiums those places are being sold at. Empirical information could allow you to determine that.

When the metro was being put in, large blocks of property were purchased and demolished almost within the blink of an eye by whoever it is—the metro authority. Clearly, government has skills in this area, knows how to resume land for purposes—mainly for transport, I have to say—but it's not rocket science. It is done. There are people in government who know how to do it. These are the sorts of principles that would be applied in these cases. A fair, just compensation approach to valuation and the premium that's going to be needed to encourage people to sell out is the way—can be a way in which we can do it. We've got the experience of doing that. I don't see why we can't do it in these cases. If you want to get a proper managed outcome that will deliver what you're asking for, you can't let the market just free for all. That's my argument.

The Hon. ANTHONY D'ADAM: What do you say about the alternative proposition around some kind of value-capture approach so you actually disincentivise people making windfall profits out of rezoning that is incidental and has arisen out of no contribution they have made? What do you say about that as an alternative?

BILL RANDOLPH: It's a really good point, actually, but the basic issue is that it's a public decision to rezone. Therefore, as a principle, you might expect the public to benefit from that rezoning and the value that creates overnight, as Peter was explaining. As soon as that tick is made and you've got your approval, that property or that land underneath it is now rezoned and revalued. So the principle of sharing that, I think, is perfectly appropriate. Developers share that value in all sorts of ways. Developer contributions are fairly well known. They complain about them; nevertheless, they pay them because that's the way you get development going. Voluntary planning agreements are another form of value sharing. There are various mechanisms out there which already do the job. They may not do it very effectively, and there may be competing charges and fees that get paid and paid over.

Unifying it in a recognised value-sharing way within the TOD—you only get charged one set of value uplift charges and you know where it's going. It could be affordable housing; it could be other things. That would be one way of regularising that process. I don't think the development industry objects to a bit of value sharing. Yes, they object to a lot of it but, if it's made explicitly, openly and transparently, the development of council would know what value they're creating. Therefore, they can negotiate and set that value-sharing component. I don't see why we can't do that. It's not actually rocket science. Every developer knows how to do a feaso, as should every planner, and I think there's a negotiation that can be made in that process.

The CHAIR: I think you mentioned that Victoria and maybe the ACT have a—

PETER PHIBBS: Windfall tax.

The CHAIR: —windfall tax. Do you have any knowledge on how that is working, how it is received or how long it has been in place? Is that something that we should look at?

PETER PHIBBS: The ACT's has been in place for a very long time. The values change but, now, if you change the use of the land, the Government gets to keep 75 per cent of that increase in value in the ACT. In Victoria, it's a windfall tax. I think there's a cut off where the value of the land might be \$2 million, and the

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increase in value is shared equally between the landowner and the Government. The Government gets 50 per cent of the uplift. They're not popular taxes in Victoria. The ACT one has been in place so long that people just think it's part of the furniture, so I don't think people get very hysterical about it. They were pretty hysterical when the tax was introduced in Victoria, but things seem to have calmed down now. They've also instituted a lot of other land taxes and other things trying to get some money back from their COVID expenditure, which I think is probably affecting the property industry in a negative way.

The CHAIR: Has anyone got any more questions?

The Hon. ANTHONY D'ADAM: I was going to ask Ms Sherry about her proposal around a specific department for strata. Can you elaborate why you think that is necessary, how that might work and why you think that is a beneficial approach?

CATHY SHERRY: At the moment, strata falls in Fair Trading. I mean absolutely no disrespect to the staff at Fair Trading, who are fantastic and who work incredibly hard, and John Minns is a wonderful strata commissioner, but it is entirely inappropriate because strata is not trading. Strata is people's homes, so it is not a business. That is one of the biggest problems we have in housing generally in Australia—conceiving of housing as a money-making venture and as a means for building wealth. Strata is way more affected than any other area. Hazel's research at City Futures produces data on apartments. Just over 50 per cent of apartments are owned by investors. So strata is very affected, but that should be affordable housing for young people and it's owned by people of my generation who get a tax break for owning it. That's not something you guys can fix at State level. Strata is very dominated in that way, and that's probably one of the reasons it's in Fair Trading. There's a range of reasons.

Strata is about people's homes. We need a department that is responsible for strata—particularly if we're going to get many, many more strata homes—and is across all of the issues in strata. At the moment it's split between land title—so land and property—which is the titling decisions about how you end up with titles to apartments, and Fair Trading does the ongoing management. We need a department that's across both of them and we need a department that other departments can then speak to. I'll quickly use the pandemic as an example. You will probably all be astounded to know that at no point in the pandemic, when we were all in lockdown—and this is not an anti-lockdown statement, but COVID negative, no contacts, not allowed to leave our houses, except for very specific reasons—it was never illegal for someone who was COVID positive, and knew it, to walk out of their apartment and walk around the common property of an apartment building: use the lift, use the stairs, sit in the corridors, go to the gym. That's because whoever was drafting the public health orders—as I said before—didn't actually understand the strata legal structure.

I read the public health orders with a fine toothcomb. Whoever was advising came from a planning background. Waxing and tanning salons were specifically provided for in the public health orders—recreational fishing, Lord Howe Island, you name it, it was there. But the basic distinction between a freestanding house sitting on a 500 square metre block where you don't come in contact with your neighbours at all and a 500-lot strata scheme where you have to come in contact with your neighbours every time you get in the lift to go outside to buy food was not in the public health orders. That was because I don't think Health had anyone in government that they could speak to to really explain to them clearly how strata works. The pandemic is just one example of when you really need to know how a big section of your housing sector actually operates.

We are going to have much more strata housing. People often say to me, "Is there a better system? Should it be company title or co-housing?" No, strata is the best system. I know the world. Hazel and I are both pretty au fait with different housing structures worldwide. It doesn't really matter what the legal structure is. It's sharing land; it's complicated. Strata is really very good. I think it's probably the best. But it can only work well if government genuinely understands how it works. Just to finish on this, there are huge problems in strata with exploitation, with strata managers, with embedded networks. You name it, there are exploitative practices. One of the reasons why they flourish is because no-one in government is really on top of those illegal structures and no-one has the confidence to say, "Actually, that's wrong. That's going to be illegal. No, you can't take a kickback on insurance," or, "You can't run an embedded network where none of the savings are going on to apartment owners."

The more strata we have, we need a government department that has responsibility for the beginning and the whole life of strata and a government department that has very genuine expertise in the area, because it's hard. It's more than just where you put your bins out. I don't have a vested interest in saying this because I'm a private property lawyer: It's really complicated property law. It's really hard. Fair Trading—particularly a lot of people are policy; they're not lawyer trained—and we're asking too much of them. We need a government department that has the appropriate expertise to make sure that strata is the kind of liveable, decent housing that citizens deserve.

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The CHAIR: Thank you very much. Our time has come to an end. We're very grateful for you coming today and giving evidence. The secretariat will be contact if anything was taken on notice.

(The witnesses withdrew.)

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Professor CATRIONA McKENZIE, Representative, Croydon Action Group, affirmed and examined

Ms MÁIRE SHEEHAN, Member, Residents Action Coalition, affirmed and examined

Dr KELSIE DADD, Spokesperson, Save Marrickville Residents Group, affirmed and examined

Mrs DIANA PRYDE, President, Chatswood West Ward Progress Association, affirmed and examined

Mr JOHN MORATELLI, President, Willoughby Environment Protection Association, affirmed and examined

Ms JAN PRIMROSE, Representative, STEP Inc, affirmed and examined

The CHAIR: Welcome all. Thank you all for giving your time to come and give evidence today. Would anyone like to make a short opening statement?

MÁIRE SHEEHAN: I'm giving an overview, rather than specifics around particular areas, so that might be useful to start with. Basically, I'm speaking on behalf of the Residents Action Coalition. That's a new alliance of groups and residents from the inner west, inner south-west and the middle ring suburbs around. They've put in submissions on the TOD, obviously. The current members include, but are not limited to, the Ashfield and District Historical Society, the Balmain Association, Burwood and District Historical Society, Cooks River Valley Association, the Glebe Society, Haberfield Association, Hurlstone Park Association, Lungs of Leichhardt, Save Lilyfield and also Save Marrickville. Basically, I'm giving an overview that's historic, and the critical issue is about the Government getting back and being involved properly as a developer in the public interest. That's really the focus.

In 1988, when there was an election, the first announcement made by the government of the day was that the government would no longer be involved in any kind of development; it would be totally up to the market. That's where we are today; we're dealing with the results of those decisions. All the public servants who were involved were all sacked, fired, made redundant, transferred—whatever. They were gone and the market was going to take over. Then over the years the market costs increased. Various governments developed a range of ways to try and make housing more affordable and to give incentives to developers to develop because, of course, they were no longer in the market in the public interest. The affordable housing Act was brought in. The fascinating thing is, under that, boarding houses were in there, which traditionally had been the low-cost, affordable housing.

But the developers look at it from a business perspective, in terms of making money. They used the boarding house to develop a marketplace for what's called student housing, but when I did my first piece of research into the cost of having a room in student housing, it was way more than your regular rents at the time. We're going back a decade or so now when the student industry took off, if you like. Now it's been transformed again, as it moves out into areas like up the northern beaches. It's been rebranded as co-living spaces, but it's basically the old boarding house rules. But they're not affordable for everybody; it's for a very minimum number of people. But there's a lifestyle thing there that the developers are addressing.

The identification of TOD sites, that's an example of also trying to provide incentives. So it's, one, trying to get incentives, because you rely on the market to do everything. Then, of course, it was "Uh-oh, they're not biting, so therefore we'll just lift all the rules and let them go and see what they'll do." But the reality is that they will still only build where they're likely to make a profit. For instance, people I talk with up on the lines on the North Shore, they have people knocking on their doors, saying, "Will you sell?" People overlooking Blackwattle Bay in Glebe have people knocking on their doors, saying, "Will you sell?" I'm in Annandale. We don't have people knock on our door—for two reasons. One, there's no view of the water because the light rail is high up so you can't see the water. Two, even if you could see the water, it's industrial; it's not a fabulous view. Whereas in Glebe, it is, so it's all driven by market perception around where we'll make a profit. That's the critical driver there, which has really taken over.

TOD is something that happens overseas as well. The difference is that included in the planning arrangement overseas, which is unlike here, you've got heritage conservation, green spaces, social infrastructure. That's all included in requirements in the planning process, whereas we've separated them. The contributions that are made—and there's a lot of research on that—go nowhere near actually meeting the cost of the social infrastructure that needs to be put in place to deal with the extra numbers of people, cars, movement et cetera. Then the lifting of planning rules in the government, that's basically an incentive to think, "Uh-oh, they're not building. They're not going in there and doing it, so let's give them another incentive. We'll lift all the rules. Let's see what happens." It ain't going to work because there's still going to be land banking. Land banking is where they get the DA through, which is basically the paperwork—peanuts. They say, "Okay, we'll hold on to that land

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until it's the best possibility in terms of making money." That's the problem with handing everything over to the market.

It is interesting, the Canberra one, where they've had to make the transition into—and they are a market force as well, but they brought in that 75 per cent. "Let's bring that back into the public domain and the public interest," and now the developers think that's normal. Making such a change here, I think, would cause a bit of a storm, do you reckon? That's changing the culture, because now our culture has basically meant that housing becomes a market commodity, not a basic human right anymore. It's now a market commodity to be traded. That's a massive cultural thing that has happened to us, certainly since the late '80s. It's quite significant. It's had a massive significant influence on people.

Basically listing the planning rules—it's a symptom of the decades-long dependency and reliance on the market to provide housing for people. We are in a housing crisis now and we now know with evidence that the market does not develop in the public interest. Business is to make a profit. That's what the market is about. That's what you're in business for—is to make a profit, not in the public interest. Getting the government back to becoming a developer, and putting in systems and processes and buyback that includes the public interest is a critical factor. I think that needs to be done now. It's the role of government to protect the public interest, definitely. That's definitely a role of government.

Now is the time for the Government to reclaim its role as an active developer in the public interest. This can be done in collaboration with local councils and communities. There are plenty of examples overseas of how governments are involved as developers in the public interest. Yes, we are different to places overseas in that they have been doing this—some of them—since the nineteenth century but certainly post the Second World War. We did start that in the '70s here but it got abandoned in the late '80s. The whole Whitlam era idea of rebuilding after the Second World War, we've abandoned that. Now we're in a completely different culture of what housing is about. It's just become a commodity. We're starting from a pretty low level, but we've got to start because we can't let the system continue to go as it's going, because otherwise we're going to have a massive social crisis on our hands.

The CHAIR: Ms Sheehan, is it okay if you could round up your opening comments. Then we can get to everyone and then we'll have lots more time for questions with you.

MAÍRE SHEEHAN: I'm towards the end now. There's an opportunity to build over railway lines, to reinforce the development of vacant lots, address the zombie DAs, disincentivise vacant homes, provide public housing on public land, and purchase land to develop public housing and private housing as well. There's a whole pile of opportunities that currently exist, but the culture has to change and the Government has to develop in the public interest. It has to be active. Thank you.

JOHN MORATELLI: As the president of the local environmental association, we recognise that there is a housing affordability crisis. We support sensible infill and medium density, with the emphasis on "sensible". It's not only an important social justice issue, it's also important to community and volunteering, which is our bread and butter. We rely on volunteers for our connection in terms of doing our environmental work, so we want people to be able to afford to live and stay in an area of their choosing. We also don't want Sydney to continue to sprawl indefinitely, which has adverse environmental impacts, causes more car travel, it's bad in terms of climate change et cetera.

We've got some very serious concerns about these particular proposals centring around loss of urban tree canopy and the impact that's going to have on the urban heat island effect. This is also associated with active and integrated transport. We don't think there is any clear route for the necessary investment in active and integrated transport, and the alternative to that when you just push more and more density into areas is more and more congestion. It makes areas unliveable. It increases private car use, and that's not something we want. We think there needs to be more investment in cycling infrastructure, for instance, but active and integrated transport more generally, and public transport.

We think that also the urban heat island effect discourages active and integrated transport for obvious reasons. People aren't going to ride around in ridiculous temperatures—and shade, of course, makes moving around, walking or cycling, much more pleasant. We're also concerned about what the loss of canopy that is likely to be caused by these changes will do in terms of habitat for wildlife, and recognise that mature trees are far more important in relation to urban cooling but also in relation to wildlife habitat than replacement trees. One thing that we didn't cover in our submission—I will just refer to it very briefly, and I noticed that some of the previous speakers did touch on it in some of the questions to them—is terms of reference (q):

the adequacy of measures to deter and punish the misuse of confidential market sensitive government information and the future processes that should be put in place.

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In relation to that, we think that one of the drivers in relation to the gaining and use of confidential market-sensitive government information is the potential to achieve windfall gain from a rezoning. In that regard, we support windfall gain taxes. We think they are useful in terms of providing funds which councils or State Government can use to build necessary infrastructure to support greater density. We also think that why should people get windfall gains in relation to things they haven't contributed to. I don't want to say anything else at this stage.

DIANA PRYDE: Our association, Chatswood West Ward Progress Association, which has been around for 90 years, agrees with the Willoughby council submission to this inquiry. We share the council's concern that there is no evidence that the Government has planned for the required infrastructure to support the predicted growth from the proposed planning reforms. In Chatswood West infrastructure is not keeping pace now, let alone accommodate the proposed changes. Two prominent examples are road infrastructure and schools.

To begin with, I'd like to highlight the lack of accounting for local topography and why desk plans, where bubbles are drawn around transport hubs, are not always appropriate for local conditions. Chatswood West ward extends from Chatswood CBD, just a little east of Westfield, and goes all the way to the Lane Cove River in the west. It encompasses environmentally sensitive areas such as the Swaines Creek catchment and Ferndale Park, which is part of the Lane Cove River catchment. Everything that happens west of the Pacific Highway affects the ecosystems further down. By way of example, I provided to the Committee a list of the wildlife present in just the Swaines Creek catchment. It is quite a list, but it's not exhaustive.

The Pacific Highway follows a ridge, which has been used for millennia by Aboriginal people. That ridge is a defining physical feature. From the ridge line, it slopes very steeply going down to the Lane Cove River. The run-off from the roads and hard surfaces impacts further down, with run-off into the creeks and rivers. Also, the lot sizes allow for reasonable-sized trees and gardens, which can absorb a lot of that run-off and for the reasons John Moratelli mentioned also of cooling the suburb. Currently developments on western side of the Pacific Highway are limited to 18 metres in height in the first row of properties. Under the TOD we could expect to have this raised to 22 to 24 metres in height and go further beyond that first row of properties.

Our association has had a lot of input into the new LEP and DCP. The process for that DCP and LEP started in 2016 and was gazetted in 2023. That is seven years of consultation, and we were a big part of that, working constructively with the council. We feel very angry that that democratic process is sort of swept away with these proposed changes. We also feel the dice are loaded in favour of the developers, which I think Máire pointed out as well. The council maintained that the proposed changes will potentially result in overdevelopment. We agree with that, and it will reduce the quality of development outcomes.

A couple of examples which I'm very familiar with: The first one is Chatswood primary school and high school. They are classic examples of not keeping pace with growth. Chatswood primary school has tripled its school population since my children were there, but the school footprint has not changed. Although recently refurbished, it will not keep pace with the current expected growth. The children, who mostly live in units, have a very small playground, with hard surfaces covered in synthetic turf. I was on the Chatswood P&C in the early 1990s, and we advocated for the State Government or the council—or anyone—to purchase the land next door to the primary school, but our requests fell on deaf ears.

I provided the panel with a picture looking at an aerial view of Chatswood primary school on the left and 688-692 Pacific Highway on the right, and 688-692 is currently a very dilapidated building. We have, as I said, tried for years to provide extra space for the school by trying to get the Government to see sense on that, but not so. It would have been an easy thing to even give an L-shaped access to Kenneth Slessor Park, which is a narrow park. If the school had had a bit of access to that, they would have had some actual trees and grass to explore.

I think I provided also, in my submission, a map prepared by our Treasurer, who has done a detailed map of proposed developments coming our way. At the moment they're on the eastern side of the Pacific Highway. There are dozens of them and they're all huge tower blocks. In total, of the ones we know, that'll provide about 1,800 car spaces. Unfortunately, the local council only looks on each development on its own, not on the cumulative impact of all the traffic that this is going to create. The traffic is a major concern of the residents of Chatswood West. Our streets are already congested, and it can only get worse. Also, where is the open space going to come from? They won't even buy 688 Pacific Highway.

On that map I provided, at the very bottom, there's a yellow block which is the metro dive site. The metro dive site is supposedly going to become a school—a high school, we believe—but we have had very little information on that, and the federation of progress associations has had very little information on that. Very close to the dive site, I would like to say the original building that Gough Whitlam went to school at is in that site. It's a Heritage building.

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The building that's the closest to that, the proposed tower block, is 613-627 Pacific Highway. Currently 27 metres high, they have just recently put in a SEAR to include a 30 per cent uplift from the 27 floors to 36 floors in return for providing 15 per cent affordable housing. Obviously, that's going to be for a limited time period. While an EIS is not yet provided for that site, we can already tell based on the shade diagrams provided for the planning proposal that the metro dive site, proposed for 1,000 students, will be completely shadowed by that building—crazy stuff.

I don't know what Gough Whitlam would think of this site becoming an innovative mixed-use precinct—he's probably turning in his grave. The last point I'd like to make is on the affordable housing. We think that the TOD should have a much stronger requirement for affordable housing. Willoughby council has recently increased their affordable housing from 4 per cent to 7 per cent and 10 per cent. The 2 per cent in the TOD is just not good enough if the Government is serious about improving housing affordability.

KELSIE DADD: On behalf of Save Marrickville, I'd like to thank you for the opportunity to provide feedback on the TOD proposal. I'll address some key concerns from our proposal. These mainly relate to Marrickville, as we've already heard about the wider picture. Once again, the indiscriminate use of 400-metre circles around railway stations neglects crucial urban planning considerations such as topography, historical significance, flood vulnerability, aircraft noise and existing street layouts. Marrickville's unique character is embraced by residents and visitors alike for its diverse community, historic architecture, dining, music venues, breweries and distilleries. Upholding architectural integrity and preserving the distinctiveness of local communities is essential for promoting a thriving and diverse urban environment.

A developer-driven pattern book approach will not foster vibrant communities and will most likely lead to their demise. Visitors do not travel to see a suburb of new apartment buildings. The TOD includes a 2 per cent requirement for affordable rentals, a decrease on the current amount mandated by the council. Marrickville currently houses a significant number of affordable options, like boarding houses, group homes, shop-top housing—which I've learnt is not really shop-top housing—and older units. The TOD's focus on apartments—likely high-end apartments if it's developer driven—threatens to displace existing residents and erode our community's affordability. Boarding houses, group homes and co-living apartments are not counted as part of our housing target.

The inner west has the second-largest number of boarding house studios in the State. As these are common amongst new developments in Marrickville, the rate at which the inner west is creating new housing supply is not being correctly measured as none of these are actually included. The TOD will impose additional infrastructure costs on council—for example, for public open spaces and playing fields, which are already under strain due to the area's high population density. Increasing this density will increase maintenance expenses and strain on our already limited green spaces.

Marrickville's green cover has decreased over the past decade, while grey cover—that is, concrete—has expanded. The TOD's impact on existing housing and their green spaces risks exacerbating urban heat island effects, biodiversity loss, and flooding—which is a real problem in Marrickville, with many areas swampy and close to sea level—and places strain on our old and struggling wastewater system. The stormwater system in parts of Marrickville dates back to the 1890s. The people who live in established homes close to the TOD stations will have to negotiate with developers and with their neighbours. If they sell, they leave family, services and established communities—to live where? Thank you for listening.

CATRIONA MCKENZIE: Thank you for inviting us to speak. The Croydon Action Group is a community group which was formed in direct response to the TOD SEPP proposals. I've lived as a resident there for 18 years now. Our group has three main concerns I wish to highlight. Firstly, the TOD SEPP does not show consultative or thorough place-based planning. There was no consultation or transparency provided to either local residents or councils as to why Croydon was chosen as a TOD SEPP location.

Croydon bridges the Burwood and Inner West LGAs, which are already the fourth and fifth most densely populated LGAs in New South Wales. Approximately 70 per cent of dwellings are already medium and high density, compared to 46 per cent in Greater Sydney. Burwood LGA is already a high-growth LGA. It has increased its population by almost 50 per cent from 2001 to 2021, with a predicted near doubling by 2036. The TOD SEPP ignores plans that council already has in progress to develop an additional 5,300 dwellings around Burwood North metro station, whilst at the same time protecting local character, amenity and housing diversity.

Our second major concern is around green space and infrastructure. Green space has been specifically cited by the Hon. Paul Scully as being taken into consideration in the selection of the TOD SEPP locations. Yet Burwood LGA has only 10 metres squared of open space per resident, representing the lowest amount of public open space per capita in New South Wales. The closest open public space from Croydon station is 800 metres. Within that 400-metre radius, there are no open public spaces, currently.

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We have no direct access to large open spaces, such as the Bay Run, Homebush or Cooks River, for sustained physical activity. Additionally, Burwood and Inner West LGAs have only 15 and 16 per cent urban tree canopy, which is well below government recommendations. Like the other speakers, we are also concerned as to how essential infrastructure, including schools, healthcare facilities and community spaces, will be augmented, as well as the impact on local traffic, with a number of bottlenecks and dangerous intersections identified around local schools.

Our third main concern is the effect on heritage conservation areas, including the Malvern Hill, Gads Hill and Cintra estates, which occupy approximately a quarter of the TOD SEPP radius—the highest proportion of any of the selected TOD locations. The largest of these is the Malvern Hill estate, which was built from 1909 and is one of the best-preserved Federation garden suburbs in Australia. It was designated as a heritage conservation area nearly 40 years ago in 1986, shortly following Haberfield. There has been near unanimous support for preservation of these heritage conservation areas by the local community in recent council surveys.

In summary, we believe that the TOD SEPP will be detrimental to both current and future residents of Croydon. Important infrastructure, particularly green space, is severely lacking in the area. The TOD SEPP does not respect the thorough and consultative place-based strategic planning of local governments to increase housing whilst also preserving community, heritage and housing diversity, which is already taking place.

JAN PRIMROSE: Good afternoon, Madam Chair, Committee members and the secretariat. Thank you for the opportunity to address the inquiry. I will be quite short as a witness and trust you will be agreeable to us tabling the supplementary submission to the inquiry that has already been provided—there's a hard copy—as additional information has become available with regard to our local and other precincts within the Transport Oriented Development Program.

The Hon. SCOTT FARLOW: I think we have already agreed this morning.

JAN PRIMROSE: In the original STEP submission, we mainly covered concerns regarding the four TOD precincts in the Ku-ring-gai local government area, namely, the lack of existing infrastructure; congestion because of the lack of major roads; stormwater management; impacts on bushland and wildlife; heritage concerns; impacts on the localised environment and amenity values; and the impacts of the diverse and well-located homes process and program.

STEP's supplementary submission, with relevant plans, satellite images and planning documents, addresses further information that has come to light regarding the wider application of the TOD and the diverse and well-located homes program, including that STEP believes the selection criteria for some of the TOD precincts have not been met, particularly regarding existing zoning—some of the precincts have no applicable zoning; that sufficient consideration has not been given to environmental issues, particularly contamination, for some of the TOD precincts; and that sufficient consideration has not been given to bushfire and/or evacuation hazards for some of the TOD precincts. We believe properties on bushfire-prone land should be excluded from the TOD, just as they have been from the diverse and well-located homes program.

We believe that, in accordance with RFS *Planning for Bushfire Protection - 2019*, a strategic bushfire study ought to have been undertaken prior to gazetting the TOD and the diverse and well-located homes programs. We think that housing approvals rather than housing completions should be used to assess whether housing targets are being met by councils, that properties within TOD precincts and areas covered by the diverse and well-located homes program which contain EPBC Act-listed matters of national environmental significance should be excluded from these programs, and that there are insufficient protections afforded to heritage conservation areas within the precincts. Supporting information is included in our supplementary submission. Thank you for the opportunity to address this inquiry.

The Hon. SCOTT FARLOW: I might start with Professor McKenzie. We heard this morning, from planning, that these sites—the tier 2 locations—were identified because there was already an expectation in some of these areas of apartment developments occurring or there were studies that were already undertaken. In Croydon, did you ever expect to see six-storey apartment buildings pop up through the Malvern Estate?

CATRIONA McKENZIE: No. We knowingly bought into the area because it was a designated heritage conservation area. We have had to follow fairly strict council guidelines, so we were extremely shocked to find that we'd gone from very tight controls around renovations or making changes to your property to the potential to be able to build a six-storey apartment. There was no community consultation, warning or indications whatsoever.

The Hon. SCOTT FARLOW: You quite rightly outlined the density and the open space that already exist in Burwood. Funnily enough, I put that question to the Minister in budget estimates earlier this year, and he indicated to me that there were alternatives to open space. For instance, apartment buildings could have open

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space on the top of them, potentially. Is that something you would see as being feasible for open space requirements in Croydon?

CATRIONA McKENZIE: Not as a marathon runner! Seriously, no. I think people need spaces for sustained activity, to walk a dog, ride a bike or push a pram. By profession, I'm a doctor and, for health outcomes, residents need more than a rooftop to get proper physical activity.

The Hon. SCOTT FARLOW: The last question is with respect to the Malvern Estate and Croydon in particular. You have an area in Burwood which is, effectively, a heritage conservation area, and there's the very famous Appian Way in Burwood that is also seen as heritage conservation area. You also have intensification around the Burwood town centre and plans for 30 and in some cases maybe even up to 50 storeys in Burwood, a lot of those being realised at the moment. It is a community that has not really shied away from development, has it?

CATRIONA McKENZIE: Correct. The council does have further plans in place for Burwood North for another 5,300 dwellings—

The Hon. SCOTT FARLOW: Around the metro site.

CATRIONA McKENZIE: —equating to 10,000 to 15,000 additional residents. They've done that with purpose, to keep the heritage conservation areas intact and to have a diversity of housing for residents available.

The Hon. SCOTT FARLOW: In an area like the Malvern Estate, do you think you could have coexisting heritage properties with six-storey apartment buildings? Do you think that could work in the Malvern Estate?

CATRIONA McKENZIE: Not really. I don't see how a six-storey block can blend with single-storey heritage dwellings.

The Hon. SCOTT FARLOW: We also heard from the department this morning about potential reuse. They cite examples of how heritage properties were reused to coexist, potentially in the City of Sydney, to be part of larger scale developments. Is that something that you would see as being feasible when it came to, as you say, the single-storey, detached housing dwelling model that exists in the Malvern Estate and has done since 1909?

CATRIONA McKENZIE: Yes, 1909. I'm not familiar with what sort of developments you're talking about. Are you talking about conversion of existing buildings?

The Hon. SCOTT FARLOW: We're not really that familiar either, but we had it cited this morning to us—

The CHAIR: It was adaptive reuse.

The Hon. SCOTT FARLOW: —that there was adaptive reuse. We had examples around Sydney. The City of Sydney was held as a bit of an exemplar in terms of how heritage could be reused and adapted with higher densities.

CATRIONA McKENZIE: In principle, yes. There are some large houses that could potentially and tastefully perhaps be converted into dwellings for more people.

The Hon. SCOTT FARLOW: A six-storey apartment block?

CATRIONA McKENZIE: No.

The CHAIR: Ms Primrose, I would like to pick up on a couple of the points that you made in your submission, but one in particular about your claim around the significant trees and the urban bushland. You've also touched on the fact that in the local government area you're referring to, we've got those matters of national environmental significance. You're suggesting the SEPP could do some serious harm in relation to the impacts on those matters and the tree canopy. Can you elaborate a little bit more on that?

JAN PRIMROSE: Certainly. In the Ku-ring-gai local government area, there are two main critically endangered ecological communities: the Blue Gum High Forest and the Sydney Turpentine Ironbark Forest. Even though there are some areas of that CEEC, as we call it, held on public land, the vast majority is actually on private land. If you've got individual DAs—and we learn that it's only at an individual DA process that these developments will be decided—we're going to see on each block that there is not what they call a significant impact on either of those two ecological communities. This block might have a backyard that's got the turpentines in it, and this one has also got turpentines and this one has. So, as a group, it's actually quite a large area of Sydney Turpentine Ironbark Forest, but individually it's going to get picked off. It will be death by a thousand cuts. We will lose these

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critically endangered matters of national environmental significance because there isn't this overall look at the cumulative impact of cutting down these ecological communities.

The CHAIR: Another matter you referred to was about bushfire and the interaction between the SEPP and the planning for bushfire requirements. Again, our understanding is that, ultimately, those things get determined at the DA level, or at the DA scale. Do you anticipate that there's a conflict with the bushfire requirements and what we might see play out under the SEPPs?

JAN PRIMROSE: Yes. From what I can see of planning for bushfire protection, there is a strategic planning level that is designated. I think it's section 4 of planning for bushfire protection. It states that, at a State level, a strategic bushfire study is required. We couldn't see anywhere that that has been done, either for each of the stations or for the diverse and well-located homes program. What you've got is these developments being viewed, again, on an individual basis, but in Hornsby shire, for instance, the RFS has repeatedly provided information to the council saying that any properties north of Mount Colah should not have medium-density housing on it because there is only one road that will get people out of the way of a bushfire.

There's only one road north of Mount Colah, and that's the Pacific Highway. It runs parallel to the fire hazard, to Berowra Valley National Park. They've repeated twice—I think it's detailed in our submission—to council, "No, we don't support medium-density housing," and yet we've got medium-density housing that is being applied to Hornsby shire in exactly the place where RFS has said, "Don't put medium-density housing." I think there's this conflict that we haven't really seen a strategic level of investigation from the RFS, and from what I can see from Planning for Bushfire Protection, a strategic bushfire study was needed and it wasn't done.

The CHAIR: It's interesting, my colleague Mr Farlow has said that the selection of some of these areas was rushed and maybe the criteria was too, but I'm just wondering whether that is an oversight, so thank you for raising that.

JAN PRIMROSE: Just to actually mention further on that, just recently there was a fact sheet issued by the department saying that for the diverse and well-located homes program—they've really got to shorten that—it won't apply in bushfire-prone land, that is category one, category two and category three vegetation, plus the buffers. You'll see in the submission there are quite a few maps that we provided, which is why it's so thick, that shows that quite a few of the TOD precincts are allowing medium and high density within those bushfire-prone land categories. It makes no sense to us not to allow two houses on one block but you can allow a six-storey apartment block. The department has realised there's a problem with building on bushfire-prone land, but it hasn't applied it to the TOD, only to the low- and mid-rise housing—whatever they call it.

The CHAIR: Mr Moratelli, I just wanted to pick up on something you referred to. I think I heard it right. When you were talking about the windfall gains tax, was I correct that you were referring to that as an anti-corruption measure or that it disincentivises that profit investigation at all costs? Is that what you were referring to?

JOHN MORATELLI: Yes, I was because it strikes me that if you are looking at one of the drivers of corruption in this area, it has to be insider knowledge of a potential rezoning. If you have a windfall gains tax to some extent—to a large extent hopefully—that would remove a lot of the profit that would come from that rezoning.

The CHAIR: Dr Dadd, you were referring to Marrickville in terms of the transfer of green cover to grey space. Your submission, or your proposition, is that with these programs we're going to keep driving that as opposed to reversing that. Is there work that is happening by council that you're aware of that is trying to turn around the green-grey ratio that this State program will interfere with?

KELSIE DADD: Not that I know of personally. There may be, but I'm not aware of any. With that, one thing I did mention was problems with stormwater in our area and the very old nature—in fact, one of the few heritage-listed things I think are our stormwater canals. With every new development, we put in new concrete, we get more run-off—and more people, more run-off. It's going to go into these systems, which at the moment are failing and leading to flooding. So there's a lot of things involved with changing that green canopy to grey space.

The Hon. SCOTT FARLOW: Dr Dadd, to that point that you made in terms of the age of the infrastructure, we've had Sydney Water in here this morning, who've said the age of the structure is completely irrelevant and that bursts and the like are also completely irrelevant in any of the considerations in terms of capacity. Do you have a perspective on that at all?

KELSIE DADD: Well, I don't think that's true. In Marrickville, it was a canal system built in the 1890s because of flooding in the area. A lot of Marrickville is very low-lying and it flooded very badly—people lost their lives—and so they put in a canal system. It was a canal system designed to take run-off from 1890s properties,

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not from a lot of concrete and cover on roads. There were dairies in the area at the time. There wasn't the run-off. We see now in Marrickville people having a look at the stormwater systems and seeing they are totally inadequate. They are blocked. Sydney Water have said they've fixed them, and pictures go up on Facebook of them not being fixed, so I don't think that Sydney Water really understands what's happening with their ageing water systems. They're not showing us in Marrickville that they're aware of the problems.

The Hon. SCOTT FARLOW: Dr Dadd, also to pick up—and I guess this applies for Croydon as well—you've had an extension in term of application of the TOD SEPP to your area, in your case to December of this year, and in Croydon's case to January of this year. What's your understanding of what is to happen in this time of the extension? Has there been any consultation from the council to either of your groups as to what will be done over this period? Or from the department of planning as well?

KELSIE DADD: From what I understand, we were working on LEP at the time that the TOD and the well-located homes proposals came out. They've allowed us—the council—time to finish working on that LEP and to have community consultation around that. That's what I understand; that may not be the full picture there. The council has begun that consultation but not in a very transparent way. We were able to fill in a survey where you could pick dot points as your answers, without giving any comment or saying you disagreed with the proposal in the first place, so very poor consultation from Inner West Council, so far at least, in the Marrickville area.

The Hon. SCOTT FARLOW: With respect to Burwood Council and Croydon—

CATRIONA McKENZIE: I know; it is hard being across the two. They did launch an investigation with a map where you could drop pins and post comments in order—and they have identified an area for investigation for more housing on the north side of the railway. As I understand it, they have until January to come up with plans that equal the target set by the Government, or the TOD SEPP will be applied. I also understand they applied for funding but weren't given any resources to do that work.

The Hon. SCOTT FARLOW: So with respect to that Croydon area of investigation, then, I take it that it would be west of PLC? On the northern side of the station, is it, that they're investigating?

CATRIONA McKENZIE: Correct. That seemed to be the main area they were investigating.

The Hon. SCOTT FARLOW: Is that beyond the 400-metre radius or is it—

CATRIONA McKENZIE: Some of it would be within it; some of it is beyond it but it would be within 800 metres of either Croydon or Burwood railway stations, as I understand it, and would present a continuous line of development from Burwood—

The Hon. SCOTT FARLOW: Along the rail corridor, effectively.

CATRIONA McKENZIE: —along the rail corridor to those flats. I don't know if you're familiar—

The Hon. SCOTT FARLOW: I grew up in Strathfield so I know Croydon incredibly well, so don't worry.

CATRIONA McKENZIE: Oh, okay. There's some flats on the north side of the railway line so it would be, I guess, a more aesthetically sensible, continuous line of development. I think they also have plans to widen Paisley Road and make it a boulevard between the two suburbs as well.

The Hon. SCOTT FARLOW: To that point, is this how it should have all started, that councils should have had ability to be able to, with their own local knowledge, actually plan for additional homes in their areas rather than just drawing a 400-metre circle on the map and saying, "Everything within it is upzoned by six storeys"?

CATRIONA McKENZIE: Absolutely. Within the 400-metre circle around Croydon station, as I said, about a quarter's a heritage conservation area. We also have two or three schools—

The Hon. SCOTT FARLOW: You've got PLC that takes up—

CATRIONA McKENZIE: —that take up perhaps another 20 per cent so it's not a particularly good choice. There is, as you may know, a lot of local congestion and with that single-lane bridge across Meta Street, it's already very—

The Hon. SCOTT FARLOW: Especially around school peak hours.

CATRIONA McKENZIE: Correct. It's already very chaotic around school pick-ups. I don't know or understand why they didn't take into account the proposed Burwood North development, which is proposing 5,300 additional dwellings adjacent to a metro station within our LGA. I don't understand. We also have some

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boarding houses and cheaper '60s and '70s flats for more vulnerable members of the community. No doubt they would also be bought up and redeveloped, rendering those people without homes.

The CHAIR: Ms Sheehan, at the commencement of the session you were talking about the Government needing to further the public interest. Your member groups, which are very broad and varied—is it the general sentiment? Is it fair to say that they feel this plan is not prosecuting the public interest? What's the summary of how your member groups see the failure or the success of these programs pursuing the public interest?

MÁIRE SHEEHAN: We've had numerous discussions mainly by email, phone, Zoom and things. What people are basically saying is that the developers rule and that the concessions that are being made—including TOD, and the lifting of all rules—are basically an incentive for the developer, saying "Can you just please build housing, because we don't have enough?" That has been an escalation or growing since the '80s—that example I gave. That has been growing. Now we're in a position where they're saying the Government needs to intervene, yes, in terms of the issues that have been brought up around specific areas and what the TOD overrules, but also in terms of the Government intervening and becoming a developer in the public interest, which it used to be.

The CHAIR: Our time has come to an end. Thank you for giving your time today to give evidence and thank you for your submissions. The Committee is very grateful. The secretariat will be in contact with you about any matters that were taken on notice.

(The witnesses withdrew.)

(Short adjournment)

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Mr DAVID CHANDLER, OAM, NSW Building Commissioner, sworn and examined

Mr MICHAEL WHEATLEY, Acting Head of Housing Portfolio, Homes NSW, sworn and examined

Ms TRINA JONES, NSW Rental Commissioner, affirmed and examined

The CHAIR: I welcome our next witnesses. Do any of you have an opening statement that you'd like to present?

TRINA JONES: I have a brief opening statement based on our submission. Thank you, Chair and Committee members, for the opportunity to address this inquiry today. I'd also like to acknowledge the land of the Gadigal people on which we meet and pay my respects to Aboriginal Elders past, present and emerging. A viable and sustainable rental sector is a key building block for a modern economy and stronger communities. As the NSW Rental Commissioner, I have a mandate to improve renting in New South Wales. This includes working towards a fair, quality and affordable rental market.

Over one-third of New South Wales residents are renters, totalling more than two million people. The typical renter is no longer young, carefree and mobile, noting more than half of all renter households are families with dependent children. We're also seeing a growing number of older renters, with over a quarter of a million people aged 60 and above renting their home. Renting is no longer just a stepping stone to home ownership. Today most people will spend at least 12 years in the rental market. Many others will rent for their whole lives. This shift requires us to rethink how we approach housing policy and development to provide genuine choice of tenure and security for renters, and viability for investors.

The New South Wales rental market is facing significant pressure, exacerbated by a lack of diverse supply and growing unaffordability of rental homes. We're experiencing very low vacancy rates, currently at 1.7 in Sydney and 1.5 in regional New South Wales. Demand is outstripping supply. Take Marrickville, for example. Last month there were 168 properties listed for rent and just over 3,150 interested renters. Over 35 per cent of those renters are in rental stress, paying more than 30 per cent of their income on rent. In some areas, like Western Sydney, people pay more than 50 per cent. As of June, the median rent in Greater Sydney is \$750 a week. This is an 11 per cent annual increase. These challenges stem from a fundamental issue: the lack of diverse and affordable housing supply.

A major part of my role is engaging with renters and landlords. Throughout this engagement renters tell me that they want to live close to areas where they can have transport, they want to see their city grow and mature, and they want to secure affordable rentals near their families, their friends and their cultural communities. Renters describe to me that they're under significant pressure due to affordability and lack of rental housing options. There continue to be concerns from the diverse stakeholders that I speak to about the need to increase housing supply. Industry representatives, renters and advocates are all calling for an increase in housing supply across New South Wales to improve the market conditions. This is a shared challenge that we're aware of.

The unaffordability of the rental market is directly linked to rental supply, both general supply and also the type of supply like social and affordable housing. The targets for affordable housing within the TOD precincts will have to contribute to addressing this shortage of affordable rental homes for our lowest income residents. The TOD program has the potential to significantly improve the rental landscape in New South Wales by increasing diverse supply, improving affordability and creating diverse, well-connected communities, which we can work towards for a rental market that offers security, quality and genuine choice for all residents. Thank you for your time today. I look forward to your questions.

The Hon. SCOTT FARLOW: I might start off on that point, Ms Jones. As you were talking about, in terms of renters, it's more than just young people getting their start in the market; it's becoming more and more families. We've heard evidence today about some of the concerns that exist around creating properties that families can live in in dense communities. I'm wondering whether you have any perspectives on that and what this program could do to be able to have not just diverse stock in terms of apartments or mid-rise but diverse housing across the spectrum, from one-bedders to three-bedders and the like.

TRINA JONES: I think that's very congruent with what we're hearing from the community. Renters are telling me that they want to have places for their families to grow. They often have a multigenerational family group within a rental home, where you might have a grandparent living with you or a sibling living with the family. Renters are really open to having opportunities for things like townhouses or walk-up apartments. They're not always that interested in having car parks. They're really interested in having local amenity and liveability. Being able to get on the train to get to work or get to the local service and live in a home that they can afford to live in is critical for people. I've been out to renter forums all over Sydney—and we're expanding those across the State—and people continue to say the same things: "We are desperately seeking security of our rental homes."

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We're looking for more options for rental homes, including two- to three-bedroom homes to accommodate families." Also, people are really seeking that liveability, so places that are close to parks, that have the library, that have the shops, and where they can get on the train and get to work.

The Hon. SCOTT FARLOW: We heard from an academic panel earlier today about getting more rental stock on the market. Rather than upzoning—either universally or around these sites by 400 metres—perhaps a better approach would have been to designate certain sites for build-to-rent and to be able to unlock a larger provider. I'm interested in your perspective as the Rental Commissioner on that kind of model and whether there needs to be any preference in the market to bring on more rental supply.

TRINA JONES: I think there's great opportunity through the TOD program to work with the diverse suppliers that can deliver everything from affordable housing to purpose-built student accommodation to build-to-rent to meet the needs of the various communities. We've done some analysis on the precincts. What we can see is, in all of the areas that are under consideration, there's over 90 per cent demand from renters and those renters are all at different life stages. So I would say that it doesn't preclude that at this stage. I think there is still opportunity to work with institutional investors and affordable housing providers to ensure that the mix around the TOD precincts is diverse. I think that's really critical to meeting the needs of renters.

The Hon. JACQUI MUNRO: Can I just clarify "over 90 per cent demand for renters"? What is that?

TRINA JONES: That basically takes a look at—if you take the month of June, we did analysis on how many properties released were and available for rent and how many were interested renters. Those data points come from PropTrack data. They're the major provider for rental platforms in Australia.

The Hon. JACQUI MUNRO: How is the 90 per cent calculated?

TRINA JONES: We basically work out how many is available versus how many people are interested in those properties.

The CHAIR: What assurances have the Government or the department provided you about how this will actually play out in terms of what you're facing on an immediate and daily basis, with an over-capacity market at the moment for renters and not enough supply, as you're suggesting? Has the Government suggested to you that this program will start delivering positive impacts for renters any time soon?

TRINA JONES: I think, as we outlined in the submission as well, the critical issue at the heart of the matter for renters is around supply. This is an issue for renters and investors. New South Wales is leading the market for investor lending in new loans for residential dwellings for rent, and we don't often have the supply to keep up with it. So we can continue to attract investors, but we need the supply to have been able to do that. What I would say is that the TOD programs are evidenced all over the world to become pretty popular places for people to live. I regularly meet with colleagues in Planning and with central government to talk about the available data on renting and what I'm hearing on the ground from renters, to help inform any implementation around the housing goals as well as to ensure that renters' voices are carried back to significant policy change in government.

The CHAIR: We've heard quite a bit of evidence that there are a lot of development consents out there but not a lot of building going on. Are you aware or have you been informed of how many of those development consents out there could actually be fulfilling the need for supply for rent, as it stands?

TRINA JONES: I'd have to defer to my colleagues in Planning on the exact numbers around completions versus consents. They'd be in a better position to comment on that. What I can really talk to is that the strong feedback that we're hearing from people is that they want to buy more houses in New South Wales. More people want to live closer to their cultural communities and to transport areas because that makes sense for them for where they're at in their lives right now.

The CHAIR: Mr Wheatley, is there anything you can say about this evidence that there are a lot of consents? It's something we've heard of consistently: There are a lot of development approvals out there, but they're not being brought on. Is there anything that you can say about that?

MICHAEL WHEATLEY: I would have to defer to the Department of Planning for that. However, I can say that in the projects that we are running, we are seeing similar themes. We obviously have increasing costs and increasing finance costs. These all impact projects and the ability to get projects going, so I can understand the pressures that developers are under to get projects going.

The Hon. SCOTT FARLOW: Can I just invite Mr Chandler to give his commentary? Because I think, as the Building Commissioner, he may have an insight into that question.

The CHAIR: I was going to let you off.

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The Hon. SCOTT FARLOW: Sorry. We've only got him for two or three more weeks, so we've got to make use of him.

DAVID CHANDLER: Look, I don't have anything large to say in an opening statement; I'm just really going to feed into the conversation that you've been having, because I think that's relevant. First of all, the work that we've done in the last five years has really been about setting up a marketplace that people are feeling more confident that they can buy into and that they can invest into. I think the banks have had to do a major reset because they've been through a process or a period of time where the cost of money was not much. We're now back to a period that's much more realistic in terms of the cost of money, so there's a bit of a reset going on there.

I think that some of that land you're talking about that potentially may be trapped at the moment is land that people paid far too much for in the first place, and so I'm hearing that there's actually some discounting of land going on at the moment. People are having to sort of do a market reality check. As much as 30 per cent is what they could have overpaid. That was evidenced by our early work, where some developers thought you could pay much more for the land and take that out of the bill cost and actually cost-shift to consumers. The reality now is that developers are much more conscious of the fact that you should do what the proper cost of construction is, rather than try to shift the cost to consumers.

So there's a bit of a reset going on at the moment. I think that'll pass fairly quickly. Banks don't have a huge appetite to let people who are sitting on landholdings sit. They're saying, "Either use it or move on, and you've got to take your pain." That's happening. There are quite a lot of lots changed in the last year—of land that was land banked, so I can see that stuff starting to free up now, which is a good thing. I think the immediate challenge we'll have is that we've now got a setting where consumers should feel more comfortable buying a property these days. Banks will be far more prudent with who they'll give money to, to build these properties. The players who are going to deliver them understand that, if you wander off the rails, you're likely to find that's a disruptive experience, and so they're starting to come to terms with that. If that setting's there, we've got to then just get the balance between the cost of land and the cost of construction set better. The cost of construction has gone up—you were to say, what, 30 per cent?

MICHAEL WHEATLEY: Yes, 30 per cent.

DAVID CHANDLER: All of these things have to work their way into the system where previous pricings have had to be adjusted. Land is going to take that price adjustment more than anything else because the cost of construction is probably not going to compress much more; it is what it is. Let's assume we get on the other side of that adjustment and say, "We've got a pipeline of DAs coming through now." I think the next challenge will be have we got the number of builders to deliver it? In the over-six-storey space, I think we've got an adequate number of builders and developers out there to deliver everything that's six storeys or more, and they're more likely these days to build a good product. So I feel very confident that we've got capacity to deliver over six storeys. I'm not as certain about the ability to deliver up to six storeys.

That's a statewide challenge; it's not just a metropolitan strategy. We've got up to six-storey developments now getting, I guess, a social licence to build buildings of that scale in urban centres. As far as Orange and up to Coffs Harbour and other regional areas, it's not surprising now to see a four- or five-storey building being put on the landscape there. So this is a statewide challenge now: Do we have the right players to deliver this stuff, and do we have enough of them? I'm not going to get ahead of the conclusions on that because the productivity commissioner is really doing some fantastic deep dives into this stuff. I've attended a workshop with him this week where he's really getting his handle on this, and so I don't want to get ahead of his call. But I think it's understanding now, if you've got a DA, how do you go from DA to key? I think that's where the productivity commissioner's really doing some solid work so I'll look forward to his report.

The Hon. SCOTT FARLOW: Can I just pick up on that point? I was in Albury last week—and I know this is not transport oriented development, nor is it impacted by the low- and mid-rise SEPP. To that point you raise, with respect, there were people who were talking to me about players coming down to the market in Albury, where there was demand for six-storey and four-storey apartment buildings, but weren't able to get the financing. So the only players who were in the market were those who could self-fund. How big a challenge is it, in that part of the market, to actually be able to secure the financing?

DAVID CHANDLER: As I say, I think there's an adjustment going on with the lenders at the moment. There's a whole bunch of lending rules starting to come back in to the banks—and I've been speaking with banks all the way through this journey to make sure that what we were doing was going to be what they wanted to be done. They've realised now that they have to insert far more governance into a loan than they've done. What we found in our journey was that many banks were giving a development funding consent and then just taking their hands off the steering wheel and not doing those prudent things that banks would do. They're actually hiring people now to do that work. I think they're getting set before they go. I think it's just a case of "Now let's show

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them some real projects that are ready to go." I think you'll start to see that clear as well, but I think the productivity commissioner's work will give us a bit more insight into any of the other barriers, Scott.

The CHAIR: On one of your points, Mr Chandler, with this recalibration that's happening, is it the case from your view that there are now less participants in terms of their capacity to deliver these construction projects than what there were? Was that kind of your summary point?

DAVID CHANDLER: I'm wondering whether this is going to be better in a book. In this recalibration, I said at the outset—and it's proving to be the case—that there are about 10 to 15 per cent of what would you call risky players. Those players played at the fringe, and they like to get in and get out fairly quickly. Some of them hunted around for DA-ready jobs so they could jump in, build it and leave. Now, they represent potentially 20 per cent of the money that's involved in delivering this stock, and I don't think it's a secret to anybody that some of that money has come from questionable sources. Some of that money is actually finding that we can see that now. The powerful tools that we have as the regulator, one of the things we look for—very easily available to everybody on the Land Registry Services—is to have a look and see who the secured debt holder is on the site. If you can see a legitimate lender, then it sort of tells you some signs about "This is a real person". But when you find that there's no lender or you find that there are some very ordinary-type lenders in there, then you can start to say, "Well, these are red flags."

We're very focused on these people and they know that now, so that could be a slice of cash that's actually not necessarily going to find its way into the market, because regulators across the board are far more powerful to look at where are the source of funds, and part of our work is that there have been some ordinary sources of funds—not my job; that's the Crime Commissioner, and he can look after that. But we do use the red flags where, if we can't see a credible source of funds, then we dig deeper. We don't dig into the source of funds; we just look at the player who's going to build the building and say, "Let's know more about you," so we can then do association maps and all that sort of stuff. We've probably got a few people foot-faulted at the moment as well, which is probably not as helpful as it might be, but I think that's part of cleaning up the landscape.

The CHAIR: With your comments around the recalibration and this idea that there was over-price purchase and that some of those are perhaps moving on and being let go, do you have a lens that some of those land-banked sites throughout the areas that are the TOD-focused areas—do you have any degree of confidence that now they are moving into hands where we might start to see them come online?

DAVID CHANDLER: I don't manage the number of lots that are sitting in the potential go row. What I'm really trying to do is to make sure that, in the public interest, we're looking at the people who want to convert that stuff that's in the pipe into a product to say, "Are you a fit player to deliver that?" Our focus is really around fitness to deliver, rather than what's in the pipe. So I really can't add much to that.

The CHAIR: In that pipe—sorry, not in the go zone, but in the fitness, that handful of potential operators—

DAVID CHANDLER: They're 10 to 15 per cent.

The CHAIR: Are you seeing them uptake?

DAVID CHANDLER: Some are deciding that they want to get off the slippery slope and readdress. For example, you know that we sought to get a market-led tool that would help identify trustworthy, and you will have read a lot about iCIRT ratings. We saw that as an essential feature of the market to actually start to say, "Well, are you really getting off the slippery slope? Are you changing your corporate structures? Are you more likely to be resilient going forward?" We've now got over 400 developers and builders being rated, because they've realised that the banks want to see that as well. The consumers are now asking for it. They're actually crossing the road—if you haven't got an iCIRT rating, they're actually going to another place.

There's potentially 20 per cent of players out there that are still in that zone, and some of them don't have the optionality of course-correcting. But every one of them that does have the option of course-correcting, we actually go out of our way to help them course-correct because we don't want players out of the market unnecessarily. In the most extreme situation, it would have been possible for Toplace to come to us and say, "We are prepared to redeem ourselves and course-correct and enter into an enforceable undertaking with the commission to go back and fix our defects and to actually behave better going forward."

The CHAIR: That's not happening.

DAVID CHANDLER: Now, they didn't take that opportunity, and they lost their licence. But I can tell you that at any time there are another half a dozen out there that are—there was another group in my office this morning who are going through that sort of pain point at the moment. They're just at that inflection point to say, "Are we going to go that way or are we going to keep going that way?" I still think there will probably be 5 to

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10 per cent that keep going that way and slap on the floor. But we've now created a situation where people who can come into the market don't have to compete with people who are on a race to the bottom. It is that correction phase. This is almost the perfect storm for this because, while we've got a shortage of supply, we're now ramping up supply. The Premier's been very clear: We want quality to prevail. We want quantity, but we want quality to prevail. I think we're just at that lift-off point, so I will be really interested in the Productivity Commission's advice to the Government about how we can just go from DA to key.

The Hon. JACQUI MUNRO: That 20 per cent of the finance that might be coming from undesirable sources—

DAVID CHANDLER: Let's say—I don't even want to characterise that. I would say dubious sources, even.

The Hon. JACQUI MUNRO: Dubious sources! Okay, I am happy to use that language. What happens with that gap? That is fairly significant.

DAVID CHANDLER: What that will allow is for legitimate players to come back in. For example, I'm talking to a number of medium-sized developers who typically, in their development, would be 20 to 50. And we're going to see more of that scale development. They've come up and said, "Commissioner, for the first time, we can now go to an auction and buy a block of dirt where the feasibility will work. We have spent the past five years going to these auctions and watching these people who seem to have endless supplies of money coming and bidding in 20 and 30 per cent more for the land, but we're now back in play." So, in this recalibration process, these people now see that they can come back in and they can bid for land, and they don't have to bid at stupid prices that are going to kill their feasibility before they even start. It's the recalibration going on. It's the return on the investment you've all made in wanting reform.

The Hon. SCOTT FARLOW: To that point, Mr Chandler, it was a submission of Professor Phibbs earlier today that one of the big challenges was in terms of that feasibility and in terms of pre-sales. I will put this to you: He said that one of the clear issues was about the history of Mascot Towers and people not buying off the plan, effectively, because of that fear. Is that something that you think is being addressed now because of these changes, or do you think it still exists out there amongst purchasers?

DAVID CHANDLER: First of all, we've got a backlog of people who've got a baked-in scepticism about buying anything in recent times, so we've had to face the fact that we do have legacy buildings, even today. You know the one that I've got one down at Wollongong at the moment, the Crownview project. I reckon that was a Mascot Towers project caught in flight. We got that before it became exactly that situation. I think there's a couple of others that maybe were nearly there, but that was the closest that I think could have converted into something like that. I understand that the market has still got this quandary: Is it right? Is it good to go or not? I think, by and large, our data would tell us that it's already 30 per cent of people are confident to come back in the market. We've got more work to do; that's more communication than evidence. People are not going to come back without evidence.

But I think consumers are going to want to see projects start. Talking to the developers, they say, "Once we've got a DA and we're a credible developer, we generally get the first 20 to 30 per cent of deposits away very quickly and then they stop. That's not enough deposits to get the job financed because the banks want 60 or 70 per cent deposits." It's a bit of a window, where it's how do you get from that 20 to 30 per cent to 50 to 60 per cent? I think that's a bit of an unresolved challenge at the moment. I know minds in the Government are thinking about that right now, so I'm hopeful that we might see some way of trying to find a creative way there that doesn't put the State's finances at risk. But I think there's some work we can do there and, in fact, some of that started prior to this Government. None of you have got a mortgage on the good ideas, that's all I can say to you.

The Hon. SCOTT FARLOW: Only on the bad ones!

The CHAIR: Mr Wheatley, can we just ask you about the Government's intention around public housing and social housing. Are there any unintended consequences that you can see through the market solution to supply in terms of the Government's commitment to deal with the ever-growing list of people desperately in need of public housing?

MICHAEL WHEATLEY: We obviously support more housing in all forms and measures to improve market housing. They are all good things. Improving market housing gets things going. From a public housing point of view, it's not detrimental to us when there's more market housing. For example, in the TOD areas, we have 24 assets within all of the TOD sites. It is a good outcome for Homes NSW, for those LAHC-owned sites, because in those 24 sites we have about 315 dwellings that are existing, and the rezoning enables us to uplift those to almost 2,000 dwellings. We will get, through these rezonings, the ability to significantly increase the density and the dwellings on Homes NSW-owned sites. That's a positive. We own that land. We don't have to pay the

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land costs; we have that built in. So it is a very efficient way of getting more public housing. It also enables us to partner with CHPs, given the greater density. We can partner with CHPs to do both social and affordable housing, which increases the diversity of the tenure in those areas as well. The fact that we have a lot of our own sites within the TOD areas—the increase in market housing is not impacting on our land values or our ability to get better outcomes.

The Hon. SCOTT FARLOW: In terms of that 315 to 2,000, have you got a program to activate it and redevelop those properties?

MICHAEL WHEATLEY: We're analysing them all now. We're going through all the sites and doing the due diligence. That's been our initial assessment. We've done our assessment of all the land and we are progressing that through a due diligence phase. But, obviously, as part of this Government's commitment for \$5.1 billion and 8,400 homes, that is all factored into the pipeline planning that we are doing across the whole portfolio in order to deliver the 8,400 homes.

The Hon. SCOTT FARLOW: In discussion about those sites, as part of the land audit within those sites are you looking to put more social homes on as well?

MICHAEL WHEATLEY: Yes. In our commitment from the \$5.1 billion for the 8,400, that includes land audit sites.

The Hon. SCOTT FARLOW: Did Homes NSW have any role in terms of the identification of sites?

MICHAEL WHEATLEY: We were consulted. We gave a lot of feedback to the Department of Planning on the process and what they were doing, and that was taken on board. So we were consulted, engaged and part of the process to talk about it. We have public housing owned everywhere, so we could've taken TODs everywhere.

The CHAIR: No, don't say that!

The Hon. SCOTT FARLOW: Don't worry. I'm not suggesting there was any conflict of interest or the like in terms of the allocation of sites.

The CHAIR: We heard earlier some really strong evidence that the best housing, particularly with apartments, in other jurisdictions and other countries is public housing, and the index of goodness and sustainability and wellness et cetera is delivered through public apartment housing. Is that something that you, in your portfolio, are looking at and are committed to in terms of the standard and providing really high quality public housing, particularly around apartments?

MICHAEL WHEATLEY: Absolutely. Design excellence is a core principle for us. We are working with the Government Architect on our internal processes and procedures to improve design excellence, especially in apartments—so residential flat buildings and other projects. Obviously, larger projects all go through the design excellence process. We believe in being tenure blind. When you drive past a new Homes NSW development, you shouldn't be able to tell whether it is public or market. It should just look like great housing. That extends to both the sustainability outcomes, and we are committing to all the high standards, the benchmarks, and it also includes accessibility levels as well because we have to provide housing that really does help ageing in place. All of the various aspects of good design and design excellence are a key driver for us.

The CHAIR: Do you have an existing ratio, even roughly about, in these TOD precincts, what it would be to the potential market versus public? Does anything like that exist?

MICHAEL WHEATLEY: There are principles and I suppose guidelines that we work to, and it does depend on the site. It does depend on the location. It depends on the amenity. Obviously, when we're close to public transport, we generally target—it could be fifty-fifty between social and affordable and market. In some areas we might go down to thirty-seventy. The key thing is looking at the local community, looking at the density of our development and determining what is the best outcome for both the public housing tenants, social housing tenants or affordable housing tenants, and the market housing, and just getting the right outcome for the community whilst we do try to genuinely deliver a lot more social and affordable homes. So there is no one rule. It is really looking at it on a case-by-case basis on the site.

The CHAIR: Is there data available now from the work that Planning has done that Homes is aware of that would say, "This precinct, this precinct", the likely capacity and the delivery that's being required, what the ratio is to public, social and affordable? Have you got that already? Has that been kind of modelled and generated?

MICHAEL WHEATLEY: I would say there are learned benchmarks rather than hard data. We acknowledge that in terms of hard data research around the world, we don't have those facts and figures. But there are a lot of case studies and benchmarks that indicate in particular areas where you can go up to fifty-fifty as

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probably the ideal outcome. There are examples where you should only go to thirty-seventy. But in the TOD areas, in inner urban areas, then up to fifty-fifty. It's not hard and fast. Whether it's fifty-five-forty-five or anything around that number, that's about right, and that's what we are demonstrating through both our major inner urban renewals but also our outer urban where we do fall back to about thirty-seventy to make sure we have that diversity and can get that better community outcome.

The Hon. SCOTT FARLOW: Just one last question from me, Mr Wheatley. The department outlined this morning that they believe that the yield for the housing accord period will be 16,000. Do you have a similar assessment in terms of Homes NSW as what you believe will be achieved in terms of additional social housing within the TOD precincts?

MICHAEL WHEATLEY: In terms of—

The Hon. SCOTT FARLOW: Across your sites, is the 2,000 over the—

MICHAEL WHEATLEY: That's across our sites.

The Hon. SCOTT FARLOW: Is that in the housing accord period or is that over the long term?

MICHAEL WHEATLEY: No, that's in total.

The Hon. SCOTT FARLOW: So in the housing accord period do you have a—

MICHAEL WHEATLEY: That is based on the work we're doing now on our pipeline across the whole portfolio. So that's where the—

The Hon. SCOTT FARLOW: So you don't have a figure at this stage with respect to the housing accord period?

MICHAEL WHEATLEY: Not specifically for TODs.

The CHAIR: Is anybody driving that so that there's transparency around what the forecast or the intention or the desire or drive is in terms of raising the stock of public housing within the TOD SEPP areas within the short term or the accord period?

MICHAEL WHEATLEY: We have to coordinate with our whole portfolio. We are, under this budget, delivering the 8,400 homes. We have to do it as part of that, as a holistic approach to the whole pipeline because we have needs everywhere, not just in the TOD precincts, and we have to look at it, respond to the needs of the waitlist and the cohorts all across the State. That's our framework in which we're looking at it.

The CHAIR: So the constraint is what's written in the budget, basically. If there was more in the budget, you would be planning for more.

MICHAEL WHEATLEY: But holistically we're always planning for more. We're always looking but we have to respond to the needs across the whole State, not just the TOD precincts.

The CHAIR: I realise that. Thank you.

The Hon. JACQUI MUNRO: I have a question for Ms Jones about the build-to-rent market, which presumably is going to grow pretty significantly and, particularly in these TOD areas, quickly. We heard earlier evidence about the complexity of strata schemes and how build-to-rent actually might provide a more simple solution for people to get into housing more flexibly and with less responsibility or risk. What's the interaction between you and your office and build-to-rent providers in how to ensure that these services—I guess they're services as much as they're delivering homes—are going to be working in the interests of residents?

TRINA JONES: To date—and I'm almost coming up to a year in the role—I've been meeting with different types and forms and shapes of build-to-rent providers, everything from superannuation organisations that are invested in build-to-rent to organisations that are known internationally to be successful at this model. Mostly I've been talking to them about what are the barriers because our build-to-rent market is really in its infancy right now in New South Wales. There's an incredible opportunity, as you pointed out, through the TOD program to support more build-to-rent programs, so I'm certainly a champion for that.

I think we need more diversity in the rental market. We talked about it in our submission and I talk about it all the time: We're relying on mum-and-dad investors to do the heavy lifting and it's an opportunity to take the burden off their shoulders. There's other types of suppliers that can be in the market and there's other ways for investors to get in the market too, whatever investment amount is available to you. So I would say that I'm having ongoing discussions with build-to-rent providers. I take all of the feedback back to central government and also to Planning so that I'm ensuring that they're aware of anything that I'm hearing.

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The Hon. JACQUI MUNRO: Do you think we'll get a firm framework around how build-to-rent providers will need to operate and the parameters? I guess they need some clarity but obviously renters need protections and certainty, and consistency as well.

TRINA JONES: I would say that this program, and also the program to deliver the housing accord, is really providing an opportunity to set some confidence to investors of all different types about how they can invest confidently in New South Wales. I hope to continue to work on that as it develops, in whatever form that might take.

The Hon. PETER PRIMROSE: Just one from me, given that we've got a couple of minutes. This is one out of left field, but please feel free to take it on notice. Earlier today we received evidence from Professor Cathy Sherry from the Macquarie Law School. She spoke about issues to do with the law underlying the Government's understanding of strata titles and said that she had been able to identify, as had her colleagues, a number of issues where she believes that there was a misunderstanding of how the law should actually operate, and that having a very clear understanding of strata title was absolutely critical, particularly now, if we're moving further in. She has suggested, for instance—and I'm not advocating this—a department of strata titles within the Government. Leaving aside the issue of whether there should be a department, the issue that she's raised—and she clearly knows what she's talking about—is that there are issues associated with perhaps a lack of understanding of all the implications of strata. Do you believe that that's something that needs to be looked at in relation to the ongoing issue about the development of TOD and, indeed, existing strata projects as well?

TRINA JONES: I will say I work within NSW Fair Trading, where the Strata and Property Services Commissioner also works. A critical component of his role is around ensuring that people understand what it means when you do put strata title and then how to manage it. There are a number of forms that are underway. If there's a particular question that you'd like me to take back on notice for the department, I can do that.

The Hon. PETER PRIMROSE: I'd welcome that, given we've received that evidence. It's something I hadn't heard before, but I think it is worthwhile pursuing. If you could take that on notice, that would be great.

TRINA JONES: No problem.

DAVID CHANDLER: Just listening to the conversation, I guess I've been distracted by talking to you about the fact that we've chased the risky players out of the market and are starting to make the market look much more attractive to the ones that we want in the market. Listening to Michael, what we should take note of is that, over the last 10 or 15 years, community housing providers have become a very, very mature and capable market. They are really, really hitting their straps now. They are the chosen co-developer with private developers now. There is a cohort of developers out there that are really going to step into working with CHPs going forward.

I've been to a couple of the projects now where CHPs and private sector development partners are working extraordinarily together with great product really targeted at what people need. The one recently out at Penrith that I went to the opening of is just a good example of the fact that this CHP market now has become very mature and very able. I think everything we could possibly do is to enable CHPs to do more faster because they now have worked out how they can actually align with competent, trustworthy developers and builders to deliver this stock. I put a lot of emphasis on them, because they are potentially the most legitimate developer in a way to start new stock. You should just note that they're an outstanding cohort of people that have got statewide capacity to deliver new stock.

The CHAIR: On that positive note, that concludes our session. Thank you very much for your time. The secretariat will be in contact with you about anything that was taken on notice.

DAVID CHANDLER: This will be the last time I appear before you.

The Hon. JACQUI MUNRO: In this capacity.

The Hon. SCOTT FARLOW: Our best wishes.

The CHAIR: A special thank you to you, Building Commissioner. That concludes our session for the day.

(The witnesses withdrew.)

The Committee adjourned at 16:20.