

Mr David Blunt AM  
Clerk of the Parliaments  
Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

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Re: Order for Papers – Transport Oriented Development Program

Dear Mr Blunt,

I refer to the above resolution of the Legislative Council under Standing Order 52 made on 7 February 2024 and your correspondence of 8 February 2024.

I am now delivering to you documents referred to in that resolution. The documents have been obtained from:

- Office of the Premier
- Office of the Minister for Planning and Public Spaces
- Department of Planning, Housing and Infrastructure
- The Cabinet Office
- Premier's Department.

Enclosed at **Annexure 1** are certification letters from officers of the following Ministerial offices and agencies certifying that, to the best of their knowledge, all documents held and covered by the terms of the resolution and lawfully required to be provided have been provided:

- Office of the Premier
- Office of the Minister for Planning and Public Spaces
- Department of Planning, Housing and Infrastructure.

I can also certify that, to the best of my knowledge, all documents covered by the terms of the resolution and lawfully required to be provided have been provided by The Cabinet Office and the Premier's Department.

I note that the Department of Planning, Housing and Infrastructure has redacted information from document DPHI.740.35 returned under the order which reveals, directly or indirectly, the deliberations of Cabinet or Cabinet Committees.

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Enclosed at **Annexure 2** are indexes of non-privileged documents that have been provided in response to the resolution.

In accordance with Item 6(a) of Standing Order 52, those documents for which a claim for privilege has been made have been separately indexed and the case for privilege has been noted. Enclosed at **Annexure 3** is an index of privileged documents.

In accordance with Item 7(a) of Standing Order 52, those documents for which a claim for personal privilege has been made have been separately indexed and the reasons why the personal information should not be made public have been provided in a submission. Enclosed at **Annexure 4** are indexes of those documents.

Enclosed at **Annexure 5** are submissions in support of the claims for privilege.

I note that submissions in support of a claim of privilege may sometimes reveal information that is privileged. To the extent that they do, such submissions should be considered to be subject to the same confidentiality as the documents over which the privilege claim is made.

Should you require any clarification or further assistance, please contact the Legal Branch of The Cabinet Office.

Sincerely,



**Kate Boyd PSM**  
Acting Secretary

<b>RETURN TO ORDER RECEIVED:</b>
#Privileged: <i>One box</i>
#Non-privileged: <i>5 boxes</i>
#Personal Information: <i>3 boxes</i>
Date: <i>28 Feb 2024</i>
Time: <i>4.30pm</i>
Signed: 

OFFICIAL

Katherine Frank  
A/ Executive Director, Legal  
Legal Branch, Office of General Counsel  
The Cabinet Office  
Level 14, 52 Martin Place  
SYDNEY NSW 2000

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### Standing Order 52 – Transport Oriented Development Program

Dear Katherine,

I refer to correspondence concerning an order for papers under Standing Order 52 passed by the Legislative Council on 7 February 2024 relating to “*Transport Oriented Development Program*”.

The Department of Planning, Housing and Infrastructure (the Department) identified documents meeting the terms of the order.

Enclosed at **Annexure 1** is an index of non-privileged documents in response to the resolution. The Department also provides a weblink to publicly available documents meeting the order.

In accordance with Item 6(a) of Standing Order 52, those documents for which a claim for privilege has been made have been separately indexed and the case for privilege has been noted. Enclosed at **Annexure 2** is an index of privileged documents and a submission in support of the case for privilege.

Enclosed at **Annexure 3** is an index of a documents that contain personal information but are otherwise not privileged pursuant to paragraphs (7)(d) and (e) of the Order.

Under item 5(7) of SO52, documents for which a claim for privacy has been made have been separately indexed and the case for personal privacy has been noted.

As paragraph (b) of the order calls for all documents relating to the scope and detail of the Transport Oriented Development State Environmental Planning Policy (SEPP).

The Department has provided the documents that are responsive to the Order that evidence a decision, step in an administrative process, statement of policy position or approach or which are otherwise material to the subject of the Order. The Department has not produced ephemeral or facilitative records, as those terms are defined by State Records Regulation 2015, Schedule 2 ie:

- ephemeral, in respect of records, means records of little value that only need to be kept for a limited or short period of time. Records that are ephemeral have no continuing value to the public office and, generally, are only needed for a few hours or a few days.
- facilitative, in respect of records, means records of little value and of a routine instructional nature that are used to further some activity. Most records that are facilitative have no continuing value to the public office and, generally, are only needed for a few hours or a few days.

I certify to the best of my knowledge that all documents held by the Department that are covered by the terms of the order and lawfully required to be provided have been provided.

If you have any questions or would like further information, please contact [SO52@dpie.nsw.gov.au](mailto:SO52@dpie.nsw.gov.au)

Yours sincerely



Somerset Hoy

General Counsel - Deputy Secretary, Governance and Legal  
Department of Planning, Housing and Infrastructure  
26 February 2024

- Encl.
1. Index of non-privileged documents.
  2. Index of privileged documents and a claim for privilege.
  3. Index of privacy documents and submission for personal privacy

OFFICIAL

**Office of the Hon Chris Minns MP**  
Premier of New South Wales



26 February 2024

Mark Hare  
Executive Director, Legal  
Legal Branch, Office of General Counsel  
The Cabinet Office  
Level 14, 52 Martin Place  
SYDNEY NSW 2000

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Re: Order for Papers — Transport Oriented Development Program

Dear Mr Hare

I refer to the Department's correspondence of 8 February 2024 in relation to a Standing Order 52 on the Transport Oriented Development Program.

I certify to the best of my knowledge that all documents held by the Office of the Premier of NSW that are covered by the terms of the resolution and are lawfully required to be provided have been provided.

We do not provide documents that are in the public domain, duplicates that have been provided elsewhere, or documents that have been provided under previous orders.

Please contact me on (02) 7225 6000 if you have any questions regarding this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read "James Cullen".

**James Cullen**  
Chief of Staff  
Office of the Premier

**The Hon Paul Scully MP**  
Minister for Planning and Public Spaces



Mr Matt Richards / Mr Mark Hare  
Executive Director, Legal Branch  
The Cabinet Office  
Level 14, 52 Martin Place  
SYDNEY NSW 2000

Dear Mr Richards / Mr Hare

I refer to the Standing Order 52 resolution passed by the Legislative Council on Wednesday, 7 February 2024.

I certify to the best of my knowledge that all documents held by the Office of the Minister for Planning and Public Spaces that are covered by the terms of the resolution and are lawfully required to be provided have been provided.

The Office of the Minister for Planning and Public Spaces does not provide documents that are in the public domain, duplicates that have been provided elsewhere and by other agencies, or documents provided under previous orders.

I can confirm that the production of the documents took approximately 32 working hours to complete.

Yours sincerely

A handwritten signature in black ink, appearing to read "Gino Mandarino".

**Gino Mandarino**  
Deputy Chief of Staff  
Office of Minister for Planning and Public Spaces

26/2/24

**Department of Planning, Housing and Infrastructure**  
**STANDING ORDER 52 FOR PAPERS**  
**Transport Oriented Development Program**

**NON-PRIVILEGED**

**Part (a)** the analysis of the 305 Sydney Trains, Sydney Metro and Intercity stations within the Six Cities Region, which identifies locations enabling infrastructure capacity near the transport station to support additional housing growth as part of the Transport Oriented Development Program, including, but not limited to the evidence based assessment of:

(i) *planning,*

**There are no documents for the order**

(ii) *road capacity,*

**There are no documents for the order**

(iii) *water and sewage capacity,*

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.31	Email:FW: Hunter Water advice re Tier 2 precincts	1-Dec-23	DPHI	Non-privileged

(iv) *school capacity,*

**There are no documents for the order**

(v) *health capacity,*

**There are no documents for the order**



**Annexure 1**

 (vi) *spatial data,*

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.01	Tier 2 TOD Stations Planning Control Analysis (Main Doc) – Nov – Dec 2023	1 Dec 23	DPHI	Non-Privileged
DPHI.740.02	Tier 2 Heritage Analysis November 2023	1 Nov 23	DPHI	Non-Privileged
DPHI.740.03	Heritage across T2 TOD December 2023	12-Dec-23	DPHI	Non-privileged

 (vii) *feasibility analysis,*

**There are no documents for the order**

 (viii) *expert advice relied upon by the Department of Planning, Housing and Infrastructure and the Minister for Planning and Public Spaces,*

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.04	FW: Rail capacity to inform housing opportunities	21 Jun 23	DPHI	Non-privileged
DPHI.740.34	TOD Tier 2 comments North District	16-Oct-23	DPHI	Non-privileged
DPHI.740.35	IRF23 3048 - Signed BN TOD Framework and SEPP	5-Dec-23	Minister Scully	Non-privileged
DPHI.740.37	Email:FW: TOD Precincts Planning	15-Sep-23	DPHI	Non-privileged
DPHI.740.40	TOD Tier 2 comments Illawarra Shoalhaven	16-Oct-23	DPHI	Non-privileged
DPHI.740.41	Tod Tier 2 - Additional 5 Stations - Recommendations	Unknown	DPHI	Non-privileged
DPHI.740.42	Email:RE: Tod Tier 2 - final check (not government policy)	14-Nov-23	DPHI	Non-privileged
DPHI.740.43	Email:RE: Tod Tier 2 - final check (not government policy)	12-Nov-23	DPHI	Non-privileged
DPHI.740.45	TOD Tier 2 comments Hunter Central Coast	16-Oct-23	DPHI	Non-privileged

 (ix) *land value sharing;*

**There are no documents for the order**

 (x) *housing affordability;*

**Annexure 1**

**There are no documents for the order**

(xi) *climate change.*

**There are no documents for the order**

**Part (b)** all documents relating to the scope and detail of the Transport Oriented Development State Environmental Planning Policy, including:

**The Department weblink is : <https://www.planning.nsw.gov.au/policy-and-legislation/housing/transport-oriented-development-program>**

(i) *targeted consultations;*

<b>Document No.</b>	<b>Document</b>	<b>Date</b>	<b>Author</b>	<b>Privilege Claim</b>
DPHI.740.05	20231123 Business Contact Form Urban Taskforce	23-Nov-23	DPHI	Non-privileged
DPHI.740.06	20231124 Business Contact Form UDIA	24-Nov-23	DPHI	Non-privileged
DPHI.740.07	20231211 Special Development Peaks Draft Notes KA	11-Dec-23	DPHI	Non-privileged
DPHI.740.08	Councils TOD Briefing Pack Jan 2024 - template	1-Jan-24	DPHI	Non-privileged
DPHI.740.09	Email:FW: FOR REVIEW: TOD LMR comms plan and media release	20-Nov-23	DPHI	Non-privileged
DPHI.740.10	Email:FW: HIA TOD briefing meeting notes	5-Feb-24	DPHI	Non-privileged
DPHI.740.11	Email:FW: NOTES - UDIA TOD briefing - 29/1	29 Jan-24	DPHI	Non-privileged
DPHI.740.12	Email:FW: Property Council TOD briefing notes	5-Feb-24	DPHI	Non-privileged
DPHI.740.13	Email:FW: Tier 1 briefings - day 1	14-Dec-24	DPHI	Non-privileged
DPHI.740.14	Email:FW: TOD engagement summary	20-Oct-23	DPHI	Non-privileged
DPHI.740.15	Email:Fwd: TOD SEPP station analysis	18 Jan-24	DPHI	Non-privileged
DPHI.740.16	Lake Macquarie Council Meeting Notes150124 (1)	15-Jan-24	DPHI	Non-privileged
DPHI.740.17	Master Speaking Notes - TOD Briefings	Unknown	DPHI	Non-privileged
DPHI.740.18	Meeting notes Bayside Council staff TOD briefing 190124	19-Jan-24	DPHI	Non-privileged
DPHI.740.19	Meeting notes Canada Bay Council staff TOD briefing 250124 (1)	25-Jan-24	DPHI	Non-privileged
DPHI.740.20	Meeting notes Canterbury Bankstown Council staff TOD briefing	22-Jan-24	DPHI	Non-privileged
DPHI.740.21	Meeting notes Central Coast Council staff TOD briefing 220124	22-Jan-24	DPHI	Non-privileged

**Annexure 1**

<b>Document No.</b>	<b>Document</b>	<b>Date</b>	<b>Author</b>	<b>Privilege Claim</b>
DPHI.740.22	Meeting notes City of Newcastle staff TOD briefing 170124	17-Jan-24	DPHI	Non-privileged
DPHI.740.23	Meeting notes Cumberland Council staff TOD briefing 190124	19-Jan-24	DPHI	Non-privileged
DPHI.740.24	Meeting notes Inner West Council staff TOD briefing 310124 (1)	31-Jan-24	DPHI	Non-privileged
DPHI.740.25	Meeting notes Ku-ring-gai Council staff TOD briefing 160124 (2)	16-Jan-24	DPHI	Non-privileged
DPHI.740.26	Meeting notes Wollongong Council staff TOD briefing 180124	18-Jan-24	DPHI	Non-privileged
DPHI.740.053	Email:FW: MO Request - Advice - Meeting with Mayors on the TOD program - 13/12	12-Dec-23	DPHI	Non-privileged
DPHI.740.054	Paul Scully Meeting Disclosure Form	12-Dec-23	Inner West Council	Non-privileged
DPHI.740.055	Email:FW: TOD meeting brief	13-Dec-23	DPHI	Non-privileged
DPHI.740.056	Mb - MPS23 210 - Council mayors - TOD Program - 14 December 2023	14-Dec-23	DPHI	Non-privileged
DPHI.740.057	Email:FW: Request to meet to discuss TOD Program Part 2	19-Dec-23	DPHI	Non-privileged
DPHI.740.058	Email:RE: Transport Oriented Development Program - request for councillor briefing	20-Dec-23	Lake Macquarie Council	Non-privileged
DPHI.740.059	Email:Transport Oriented Development State Environment Planning Policy	21-Dec-23	DPHI	Non-privileged
DPHI.740.060	TOD Councils TOD Briefing Pack December 2023	1-Dec-23	DPHI	Non-privileged
DPHI.740.061	Email:RE: Request for briefing session on Transit Oriented Development proposal for Council staff at Lake Macquarie City Council	21-Dec-23	DPHI	Non-privileged
DPHI.740.062	Email:FW: Transport Oriented Development Program	21-Dec-23	DPHI	Non-privileged
DPHI.740.063	Email:RE: Transport Oriented Development Program	21-Dec-23	DPHI	Non-privileged
DPHI.740.064	Email:RE: Transport Oriented Development Program	21-Dec-23	DPHI	Non-privileged
DPHI.740.065	Email:Councillor Briefing	21-Dec-23	DPHI	Non-privileged
DPHI.740.066	Email:FW: Transport Oriented Development Program - Submission	21-Dec-23	DPHI	Non-privileged
DPHI.740.067	Email:Transport Oriented Development Program - Submission due 31 Jan	21-Dec-23	NCC	Non-privileged
DPHI.740.068	Email:FW: Transport Oriented Development Program	21-Dec-23	DPHI	Non-privileged
DPHI.740.069	Email:RE: Transport Oriented Development Program	21-Dec-23	DPHI	Non-privileged
DPHI.740.070	Email:RE: Transport Oriented Development Program	21-Dec-23	DPHI	Non-privileged

Annexure 1

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.071	Email:RE: Transport Oriented Development Program - Submission	21-Dec-23	DPHI	Non-privileged
DPHI.740.072	Email:RE: Request for briefing session on Transit Oriented Development proposal for Council staff at Lake Macquarie City Council	21-Dec-23	DPHI	Non-privileged
DPHI.740.073	Email:FW: MO Request - Advice - UDIA - 16 Jan	8-Jan-24	DPHI	Non-privileged
DPHI.740.074	Email:RE: Transport Oriented Development Program	9-Jan-24	DPHI	Non-privileged
DPHI.740.075	Email:RE: Request to meet to discuss TOD Program Part 2	10-Jan-24	DPHI	Non-privileged
DPHI.740.076	Email:RE: Transport Oriented Development Program	10-Jan-24	DPHI	Non-privileged
DPHI.740.077	Email:RE: Request to meet to discuss TOD Program Part 2	10-Jan-24	DPHI	Non-privileged
DPHI.740.078	Email:RE: Request to meet to discuss TOD Program Part 2	10-Jan-24	DPHI	Non-privileged
DPHI.740.079	Email:FW: Request for briefing to Councillors and extension on submission to TOD SEPP - Burwood Council	11-Jan-24	DPHI	Non-privileged
DPHI.740.080	Email:RE: Request for briefing to Councillors and extension on submission to TOD SEPP - Burwood Council	11-Jan-24	DPHI	Non-privileged
DPHI.740.081	Email:RE: Request for briefing to Councillors and extension on submission to TOD SEPP - Burwood Council	11-Jan-24	DPHI	Non-privileged
DPHI.740.082	Agenda Lake Macquarie TOD Briefing - 15 Jan 2024	15-Jan-24	DPHI	Non-privileged
DPHI.740.083	Email:FW: Transport Oriented Development Program - request to confirm Councillor briefing	15-Jan-24	DPHI	Non-privileged
DPHI.740.084	Email:RE: Placeholder: TOD Council Staff Briefing Session - Wollongong City Council	15-Jan-24	DPHI	Non-privileged
DPHI.740.085	Email:Re: Consultation with UDIA - tod sepp	17-Jan-24	DPHI	Non-privileged
DPHI.740.086	Email:RE: Consultation with UDIA - tod sepp	18-Jan-24	DPHI	Non-privileged
DPHI.740.087	Email:City of Newcastle Council staff TOD briefing notes (test)	19-Jan-24	DPHI	Non-privileged
DPHI.740.088	Meeting notes Newcastle Council briefing	1_jan_24	DPHI	Non-privileged
DPHI.740.089	Newcastle Council staff TOD Briefing Pack January 2024	1-Jan-24	DPHI	Non-privileged
DPHI.740.090	Email:TOD council staff briefing Ku-ring-gai follow up	19-Jan-24	DPHI	Non-privileged
DPHI.740.091	Email:FW: Cumberland Council Briefing - dot points	19-Jan-24	DPHI	Non-privileged
DPHI.740.092	Email:[Updated attachment] RE: TOD council staff briefing Ku-ring-gai follow up	19-Jan-24	DPHI	Non-privileged
DPHI.740.093	Council staff TOD Briefing Pack Jan 2024 - Ku-ring-gai	1-Jan-24	DPHI	Non-privileged

Annexure 1

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.094	Email:RE: TOD council staff briefing Lake Macquarie follow up	21-Jan-24	DPHI	Non-privileged
DPHI.740.095	Lake Macquarie Council Meeting Notes150124	15-Jan-24	DPHI	Non-privileged
DPHI.740.096	Councils TOD Briefing Pack Jan 2024 - Lake Macquarie	1-Jan-24	DPHI	Non-privileged
DPHI.740.097	Email:RE: COPY OF MEETING NOTES RE: TOD Newcastle council staff briefing follow up	22-Jan-24	DPHI	Non-privileged
DPHI.740.099	Email:RE: Natalie - Meeting with Georges River Council (Staff)	22-Jan-24	DPHI	Non-privileged
DPHI.740.100	Agenda Central Coast Council TOD Briefing - 22 Jan 2024	22-Jan-24	DPHI	Non-privileged
DPHI.740.101	Email:RE: COPY OF MEETING NOTES RE: TOD Newcastle council staff briefing follow up	22-Jan-24	DPHI	Non-privileged
DPHI.740.102	Meeting notes City of Newcastle 170124	17-Jan-24	DPHI	Non-privileged
DPHI.740.103	Council staff TOD Briefing Pack Jan 2024 - Newcastle	1-Jan-24	DPHI	Non-privileged
DPHI.740.104	Email:RE: Natalie - Meeting with Georges River Council (Staff)	22-Jan-24	DPHI	Non-privileged
DPHI.740.105	Email:RE: Natalie - Meeting with Georges River Council (Staff)	22-Jan-24	DPHI	Non-privileged
DPHI.740.106	Email:RE: [Updated attachment] RE: TOD council staff briefing Kuring-gai follow up	22-Jan-24	DPHI	Non-privileged
DPHI.740.109	Email:RE: Request for extension - TOD program - 2 February 2024	23-Jan-24	DPHI	Non-privileged
DPHI.740.110	Email:TOD council staff briefing Bayside follow up	23-Jan-24	DPHI	Non-privileged
DPHI.740.111	Email:RE: Wollongong Council staff TOD briefing notes	23-Jan-24	DPHI	Non-privileged
DPHI.740.112	Email:RE: Urgent clarification sought - TOD program permissibility - MU1 Mixed Use Zone	23-Jan-24	DPHI	Non-privileged
DPHI.740.113	Email:FW: Briefing to Lake Macquarie Councillors on the TOD SEPP - 5 February 2024	23-Jan-24	DPHI	Non-privileged
DPHI.740.114	Email:Cumberland Council staff TOD briefing notes	23-Jan-24	DPHI	Non-privileged
DPHI.740.115	Email:Material for Councillor Briefings	23-Jan-24	DPHI	Non-privileged
DPHI.740.116	Email:RE: [Updated attachment] RE: TOD council staff briefing Kuring-gai follow up	24-Jan-24	DPHI	Non-privileged
DPHI.740.117	Email:RE: Queries - TOD Council Staff Briefing - Georges River	24-Jan-24	DPHI	Non-privileged
DPHI.740.118	Email:FW: Consultation with UDIA - tod sepp	24-Jan-24	DPHI	Non-privileged
DPHI.740.119	Email:Canterbury Bankstown Council staff TOD briefing notes	24-Jan-24	DPHI	Non-privileged
DPHI.740.120	Email:Central Coast Council staff TOD briefing notes	25-Jan-24	DPHI	Non-privileged
DPHI.740.121	Email:Georges River Council staff TOD briefing notes	25-Jan-24	DPHI	Non-privileged

**Annexure 1**

<b>Document No.</b>	<b>Document</b>	<b>Date</b>	<b>Author</b>	<b>Privilege Claim</b>
DPHI.740.122	Email:RE: Tod speaking notes	25-Jan-24	DPHI	Non-privileged
DPHI.740.123	Email:RE: Selection of Part 2 TPOD Precincts - Access to departmental Analysis	25-Jan-24	DPHI	Non-privileged
DPHI.740.124	Email:RE: Peaks slides	28-Jan-24	DPHI	Non-privileged
DPHI.740.125	Email:MO Request - Meeting Brief - Ku-ring-gai Council - 28 Feb	29-Jan-24	DPHI	Non-privileged
DPHI.740.126	mayorpa-2024-01-22-14-20-01-754	29-Jan-24	MO	Non-privileged
DPHI.740.127	Email:TOD briefing slides and notes - Bayside and Georges River Council	30-Jan-24	DPHI	Non-privileged
DPHI.740.128	Councils TOD Briefing Pack Jan 2024 - Bayside	1-Jan-24	DPHI	Non-privileged
DPHI.740.129	Meeting with Bayside Council 190124	19-Jan-24	DPHI	Non-privileged
DPHI.740.130	Meeting notes Georges River Council staff TOD briefing 230124	23-Jan-24	DPHI	Non-privileged
DPHI.740.131	Councils TOD Briefing Pack Jan 2024 - Georges River (2)	1-Jan-24	DPHI	Non-privileged
DPHI.740.132	Email:TOD briefing slides and notes - Cumberland and Canterbury-Bankstown Council	30-Jan-24	DPHI	Non-privileged
DPHI.740.133	Council staff TOD Briefing Pack Jan 2024 - Cumberland	1-Jan-24	DPHI	Non-privileged
DPHI.740.135	Council staff TOD Briefing Pack Jan 2024 - Canterbury Bankstown	1-Jan-24	DPHI	Non-privileged
DPHI.740.137	Email:TOD council staff briefings	31-Jan-24	DPHI	Non-privileged
DPHI.740.140	Meeting notes Lake Macquarie Council staff TOD briefing 150124	15 Jan 24	DPHI	Non-privileged
DPHI.740.141	Council staff TOD briefing Pack Jan 2024 - Lake Macquarie	1 Jan 24	DPHI	Non-privileged
DPHI.740.142	Council staff TOD Briefing Pack Jan 2024 - Central Coast	31-Jan-24	DPHI	Non-privileged
DPHI.740.143	Meeting notes Central Coast Council staff TOD briefing 220124	22-Jan-24	DPHI	Non-privileged
DPHI.740.146	Email:RE: Extension of time for Tod Program - and draft	31-Jan-24	DPHI	Non-privileged
DPHI.740.147	Email:TOD Council staff briefing slides and notes	31-Jan-24	DPHI	Non-privileged
DPHI.740.149	Council staff TOD Briefing Pack Jan 2024 - Ku-ring-gai (1)	1-Jan-24	DPHI	Non-privileged
DPHI.740.152	Email:RE: Draft Ku-ring-gai Council Submission - Transport Orientated Development Program	31-Jan-24	DPHI	Non-privileged
DPHI.740.153	Email:RE: CM: TOD council staff briefing Bayside follow up	31-Jan-24	DPHI	Non-privileged
DPHI.740.154	Email:RE: Transport Oriented Development SEPP - Councillor Briefings	31-Jan-24	DPHI	Non-privileged
DPHI.740.155	Email:RE: TOD Council Staff Briefing Session - Inner West	1-Feb-24	DPHI	Non-privileged
DPHI.740.156	Email:Inner West Council staff TOD briefing notes	1-Feb-24	DPHI	Non-privileged

## Annexure 1

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.158	Councils TOD Briefing Pack Jan 2024 - Inner West	1-Jan-24	DPHI	Non-privileged
DPHI.740.159	Email:FW: Draft Ku-ring-gai Council Submission - Transport Orientated Development Program	1-Feb-24	DPHI	Non-privileged
DPHI.740.160	Draft Ku-ring-gai Council Submission - Transport Orientated Development Program	31-Jan-24	Ku ring gai Council	Non-privileged
DPHI.740.161	Email:RE: Request for Dept rep/meeting advice - Lynda Voltz MP and Cumberland Council meeting - 8 February 2024	1-Feb-24	DPHI	Non-privileged
DPHI.740.162	Email:FW: Request for Dept rep/meeting advice - Lynda Voltz MP and Cumberland Council meeting - 8 February 2024	1-Feb-24	DPHI	Non-privileged
DPHI.740.163	Paul Scully Meeting Disclosure Form	Unknown	MO	Out of scope
DPHI.740.164	Email:FW: Submission - TOD SEPP: Canterbury Bankstown Council	2-Feb-24	DPHI	Non-privileged
DPHI.740.165	240131_3D Modeling TOD Study_Cant_Wiley	1-Jan-24	Canterbury Bankstown Council	Non-privileged
DPHI.740.166	COUNCIL SUBMISSION - TOD Precincts	1-Jan-24	Canterbury Bankstown Council	Non-privileged
DPHI.740.167	Cover Letter	31-Jan-24	Canterbury Bankstown Council	Non-privileged
DPHI.740.168	Email:FW: Inner West Extension of time for Tod Program - and draft	6-Feb-24	DPHI	Non-privileged
DPHI.740.169	Email: Penrith Council staff TOD briefing notes	14 Feb 24	DPHI	Non-privileged
DPHI.740.170	Meeting with Penrith Council 010224	1-Feb-24	DPHI	Non-privileged
DPHI.740.171	Councils TOD Briefing Pack Feb 2024 - Penrith	1-Feb-24	DPHI	Non-privileged
DPHI.740.172	Email: FW: Wollongong Council staff TOD briefing notes	23 Jan 24	DPHI	Non-privileged
DPHI.740.173	Email:FW: Heritage and Infill Residential Development - Examples and Guidance	12-Dec-23	DPHI	Non-privileged
DPHI.740.174	Email:FW: Gordon - Tier 2 TOD Concerns	22-Dec-23	DPHI	Non-privileged
DPHI.740.175	Local_Environmental_PlanMaking_Guideline_V13	1-Aug-23	DPHI	Non-privileged
DPHI.740.176	Email:FW: TOD sites - Cumberland Council	9-Jan-24	DPHI	Non-privileged
DPHI.740.177	Email:FW: TOD sites - Cumberland Council	9-Jan-24	DPHI	Non-privileged
DPHI.740.178	Email:FW: NAB roundtable_notes	19-Oct-23	DPHI	Non-privileged

## Annexure 1

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.179	Email:FW: Proposed changes	6-Dec-23	DPHI	Non-privileged
DPHI.740.180	Email:FW: TOD tier 2 - consultation	20-Dec-23	DPHI	Non-privileged
DPHI.740.181	Email:FW: Combined Factsheet & FAQ	6-Dec-23	DPHI	Non-privileged
DPHI.740.182	FINAL TOD Program document	1-Dec-23	DPHI	Non-privileged
DPHI.740.183	FINAL TOD Program document	1-Dec-23	DPHI	Non-privileged
DPHI.740.184	Email:FW: Planning directors - USE THIS ONE	6-Dec-23	DPHI	Non-privileged
DPHI.740.185	08012024143201-0001	8-Jan-24	Cumberland Council	Non-privileged
DPHI.740.186	BN - MPS24 2 - Minister - UDIA	17-Jan-24	DPHI	Non-privileged
DPHI.740.187	1730 - Planning and Public Spaces - TRANSPORT ORIENTED DEVELOPMENT STATE ENVIRONMENTAL PLANNING POLICY	2-Feb-24	DPHI	Non-privileged
DPHI.740.188	1729 - Planning and Public Spaces - TRANSPORT ORIENTED DEVELOPMENT STATE ENVIRONMENTAL PLANNING POLICY	2-Feb-24	DPHI	Non-privileged
DPHI.740.189	BN - MPS24/25 - Minister - Lynda Voltz MP	5 Feb 24	DPHI	Non-privileged
DPHI.740.190	Meeting with Ku Ring Gai Council	22-Jan-24	MO	Non-privileged
DPHI.740.192	Email:FW: Economic feasibility methodology	6-Dec-23	DPHI	Non-privileged
DPHI.740.193	190723_TOD_Economic Feasibility methodology	Unknown	DPHI	Non-privileged
DPHI.740.194	Email:FW: {Sensitive:NSW Cabinet} TOD Program - assessment process	21-Dec-23	DPHI	Non-privileged
DPHI.740.196	Email:FW: Affordable Housing analysis	5-Dec-23	DPHI	Non-privileged
DPHI.740.198	Email:FW: [Sensitive: NSW Cabinet] RE: 8 TOD sites info	5-Dec-23	DPHI	Non-privileged
DPHI.740.199	Factsheet_TOD T1 Accelerated Precincts 051223	Unknown	DPHI	Non-privileged
DPHI.740.200	TOD_Tier 1 Frequently Asked Questions 051223	Unknown	DPHI	Non-privileged
DPHI.740.201	20231205 MO Speaking Notes - Accelerated Precincts - Affordable Housing	Unknown	DPHI	Non-privileged
DPHI.740.202	Att A_ TOD Accelerated Precincts framework_051223	1-Dec-23	DPHI	Non-privileged
DPHI.740.204	IRF23-1964 - Attachment A - TOD Program Position Paper	1-Jul-23	DPHI	Non-privileged
DPHI.740.205	Email:FW: SENSITIVE: NSW CABINET [TOD Program - probity]	9-Nov-23	DPHI	Non-privileged
DPHI.740.206	Property Council - BCF	17-Oct-23	DPHI	Non-privileged
DPHI.740.208	03 August 2023 - UDIA - Business Contact Form	3-Aug-23	DPHI	Non-privileged
DPHI.740.209	Committee of Sydney- BCF	19-Oct-23	DPHI	Non-privileged

**Annexure 1**

<b>Document No.</b>	<b>Document</b>	<b>Date</b>	<b>Author</b>	<b>Privilege Claim</b>
DPHI.740.211	Business Contact Form - Property Council - 6_June_2023	6-Jun-23	DPHI	Non-privileged
DPHI.740.212	UDIA- BCF (1)	13-Oct-23	DPHI	Non-privileged
DPHI.740.213	Email:TOD council staff briefing Lake Macquarie follow up	19 Jan 24	DPHI	Non-privileged
DPHI.740.214	Email:FW: MO Request - Advice/Reporting Request - Peak Body Stakeholder Meeting - 11/08	18-Sep-23	DPHI	Non-privileged
DPHI.740.215	Peak Stakeholder Issues Register.xlsx	Unknown	DPHI	Non-privileged
DPHI.740.216	Email:MO Request - Advice - Burwood Council & Jason Li	18-Dec-23	DPHI	Non-privileged
DPHI.740.217	Advice Request - Burwood North	18 Dec 23	DPHI	Non-privileged
DPHI.740.218	Email:RE: MO Request - Advice - Strathfield LEP - 28/11	20-Dec-23	DPHI	Non-privileged
DPHI.740.219	Email:MO Request - Meeting Brief - Australian Institute of Architects Roundtable	17-Jan-24	DPHI	Non-privileged
DPHI.740.220	MB - Minister - MPS 24 1 - Australian Institute of Architects Roundtable	15 Jan 24	DPHI	Non-privileged
DPHI.740.221	Email:MO Request - Meeting Brief - North Sydney Council	18-Dec-23	DPHI	Non-privileged
DPHI.740.222	Meeting Brief - Minister - North Sydney Council	15 Dec 23	DPHI	Non-privileged
DPHI.740.223	Letter to Minister	26-Sep-23	Nth Sydney Council	Non-privileged
DPHI.740.224	Letter to Minister	16-Nov-23	SLCN 2036	Non-privileged
DPHI.740.225	Letter to Minister	3-Nov-23	Nth Sydney Council	Non-privileged
DPHI.740.226	Email:FW: URGENT APPROVAL: ED APPROVED H&EP: MO Request - Advice - Inclusive Renewal around stations - August 24	24-Aug-23	DPHI	Non-privileged
DPHI.740.227	Advice Request - Planning Institute of Australia and Shelter NSW	Unknown	DPHI	Non-privileged
DPHI.740.228	MB - MPS24 8 - Att A - NSROC Meeting Brief from 19 December 2023	27 Nov 23	DPHI	Non-privileged
DPHI.740.229	Email:FW: Request for Department briefing - Jenny Leong MP re - changes to Housing SEPP	21-Dec-23	DPHI	Non-privileged
DPHI.740.230	231218_Rep_Scully_SEPP changes	18 Dec 23	Newtown MP	Non-privileged
DPHI.740.231	MB - MPS24 8 - NSROC - 1 Feb	30 Jan 24	DPHI	Non-privileged
DPHI.740.232	Email:RE: MO Request - Advice - UDIA - 16 Jan	12-Jan-24	DPHI	Non-privileged
DPHI.740.233	MB - MPS24 2 - Minister - UDIA	12 Jan 24	DPHI	Non-privileged

**Annexure 1**

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.234	MB - Minister - MPS 24 1 - Australian Institute of Architects Roundtable - Final	15 Jan 24	DPHI	Non-privileged
DPHI.740.237	Meeting Summary - Dev Peak Bodies - FIN	3 Oct 23	DPHI	Non-privileged

(ii) *explanation of intended effects; and*

**There are no documents for the order**

(iii) *community consultation.*

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.27	transport-oriented-development-program	1-Dec-23	DPHI	Non-privileged

**Part (c)** *relevant information which the Minister for Planning and Public Spaces and The Cabinet Office relied upon to determine the location of the eight Transport Oriented Development Program accelerated precincts and the 31 Transport Oriented Development Program precincts where the Transport Oriented Development State Environmental Planning Policy applies.*

**There are no documents for the order**

**Part (d)** *any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.* **There are no documents for the order**

## Office of the Hon. Paul Scully, Minister for Planning and Public Spaces

## ORDER FOR PAPERS – Transport Orientated Development Program

## NON-PRIVILEGED DOCUMENTS

Document No.	Document	Date of Creation	Author	Privilege Claim Y/N?
20.b.i.3	Email Internal Office of the Minister of Planning and Public Spaces - FW: FINAL TOD Program document 151223.docx (Attachments: Publicly Available Documents).	15/12/2023	Office of the Minister for Planning and Public Spaces	
20.b.i.4	Email Internal Office of the Minister of Planning and Public Spaces - FW: LGNSW to NSW Premier and Ministers Scully and Jackson - Density Zones (Attachment: Priority development zones and housing)	2/11/2023	Office of the Minister for Planning and Public Spaces	
20.b.i.5	Email Internal Office of the Minister of Planning and Public Spaces -FW: Upcoming matters for exhibition / determination	14/12/2023	Office of the Minister for Planning and Public Spaces	



**THE CABINET OFFICE AND PREMIER'S DEPARTMENT**  
**ORDER FOR PAPERS – Transport Oriented Development Program**  
**NON-PRIVILEGED DOCUMENTS**

Document No.	Document	Date of Creation	Author	Privilege Claim Y/N?
(b) 01	Email from DPE to TCO – Transport Oriented Development Program – program information Advising the program information is on DPE website	19/12/2023	Department of Planning and Environment	N
(b) 02	Email from Urban Taskforce to Premier's Office and Premier's Department – Submission to GVV on the new draft Region Plan and District (or City) plans	18/9/2023	Urban Taskforce	N

**Department of Planning, Housing and Infrastructure  
STANDING ORDER 52 FOR PAPERS  
Transport Oriented Development Program**

**PRIVILEGED**

**Part (a)** the analysis of the 305 Sydney Trains, Sydney Metro and Intercity stations within the Six Cities Region, which identifies locations enabling infrastructure capacity near the transport station to support additional housing growth as part of the Transport Oriented Development Program, including, but not limited to the evidence based assessment of:

(i) *planning,*

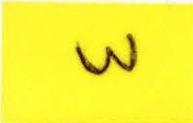
**There are no documents for the order.**

(ii) *road capacity,*

**There are no documents for the order.**

(iii) *water and sewage capacity,*

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.28	Email:RE: SENSITIVE station analysis - clarification and Hunter Water	22-Nov-23	DPHI	PII - Commercial in confidence
DPHI.740.29	Email:FW: SENSITIVE_station analysis (not government policy)	17-Nov-23	DPHI	PII - Commercial in confidence
DPHI.740.30	Tier 2 TOD response for DPE 22_9_2023 with revised accord numbers for 11 ToD	Unknown	DPHI	PII - Commercial in confidence
DPHI.740.32	231122 - DPE Request - Transit Oriented Development	Unknown	DPHI	PII - Commercial in confidence



**Annexure 2**

(iv) *school capacity,*

**There are no documents for the order.**

(v) *health capacity,*

**There are no documents for the order.**

(vi) *spatial data,*

**There are no documents for the order.**

(vii) *feasibility analysis,*

<b>Document No.</b>	<b>Document</b>	<b>Date</b>	<b>Author</b>	<b>Privilege Claim</b>
DPHI.740.33	Combined report Feasibility - Transport oriented Development Program January 2024.docx	Unknown	DPHI	PII - Commercial in confidence

(viii) *expert advice relied upon by the Department of Planning, Housing and Infrastructure and the Minister for Planning and Public Spaces,*

<b>Document No.</b>	<b>Document</b>	<b>Date</b>	<b>Author</b>	<b>Privilege Claim</b>
DPHI.740.36	TOD Tier 2 comments Eastern.docx	18-Oct-23	DPHI	PII - Commercial in confidence
DPHI.740.38	TOD Tier 2 precinct list and next steps.docx	Unknown	DPHI	PII - Commercial in confidence

Annexure 2

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.39	Tier 2 PLUSH teams comments	Unknown	DPHI	PII - Commercial in confidence
DPHI.740.44	Email:FW: SENSITIVE_NSW Government proposed stations (not government policy)	15-Nov-24	DPHI	PII - Commercial in confidence
DPHI.740.46	Email:Fwd: Rozelle Bay	5-Dec-23	DPHI	PII - Commercial in confidence

(ix) *land value sharing;*

**There are no documents for the order.**

(x) *housing affordability;*

**There are no documents for the order.**

(xi) *climate change.*

**There are no documents for the order.**

Annexure 2

**Part (b)** all documents relating to the scope and detail of the Transport Oriented Development State Environmental Planning Policy, including:

(i) *targeted consultations;*

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.191	Attachment B - TOD SEPP stations and affected councils	Unknown	DPHI	PII - Commercial in confidence
DPHI.740.195	TOD SEPP Program_DPE analysis	Unknown	Unknown	PII - Commercial in confidence
DPHI.740.197	Consolidated initial TOD Analysis	Unknown	DPHI	PII - Commercial in confidence
DPHI.740.203	Email: FW: Gordon - Tier 2 TOD Concerns	21-Dec-23	DPHI	PII - Commercial in confidence

(ii) *explanation of intended effects; and*

**There are no documents for the order.**

(iii) *community consultation.*

**There are no documents for the order.**

## Annexure 2

**Part (c)** relevant information which the Minister for Planning and Public Spaces and The Cabinet Office relied upon to determine the location of the eight Transport Oriented Development Program accelerated precincts and the 31 Transport Oriented Development Program precincts where the Transport Oriented Development State Environmental Planning Policy applies.

Document No.	Document	Date	Author	Privilege Claim
DPHI.740.47	Email:FW: Non-refusal standards v non-discretionary standards	24-Oct-23	DPHI	LPP - advice
DPHI.740.48	Email:RE: TOD program advice	6-Nov-23	DPHI	LPP - advice
DPHI.740.49	Email: RE: TOD program advice	24-Oct-23	DPHI	LPP - advice
DPHI.740.50	Email: RE: TOD program advice	2-Nov-23	DPHI	LPP - advice

**Part (d)** any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

**There are no documents for the order.**

Department of Planning, Housing and Infrastructure  
**STANDING ORDER 52 FOR PAPERS**  
Transport Oriented Development Program

**PRIVACY DOCUMENTS RETURNED UNDER PARAGRAPH 7 OF S052**

**Part (a)** the analysis of the 305 Sydney Trains, Sydney Metro and Intercity stations within the Six Cities Region, which identifies locations enabling infrastructure capacity near the transport station to support additional housing growth as part of the Transport Oriented Development Program, including, but not limited to the evidence based assessment of:

(i) *planning,*

**There are no documents for the order**

(ii) *road capacity,*

**There are no documents for the order**

(iii) *water and sewage capacity,*

**There are no documents for the order**

(iv) *school capacity,*

**There are no documents for the order**

(v) *health capacity,*

**There are no documents for the order**

(vi) *spatial data,*

Annexure 3

**There are no documents for the order**

(vii) *feasibility analysis,*

**There are no documents for the order**

(viii) *expert advice relied upon by the Department of Planning, Housing and Infrastructure and the Minister for Planning and Public Spaces,*

**There are no documents for the order**

(ix) *land value sharing;*

**There are no documents for the order**

(x) *housing affordability;*

**There are no documents for the order**

(xi) *climate change.*

**There are no documents for the order.**

Privacy

**Part (b)** *all documents relating to the scope and detail of the Transport Oriented Development State Environmental Planning Policy, including:*

**Annexure 3**

(i) *targeted consultations;*

<b>Document No.</b>	<b>Document</b>	<b>Date</b>	<b>Author</b>	<b>Privilege Claim</b>
DPHI.740.51	RE: Transport Oriented Development Program	22 Jan 24	DPHI	Privacy
DPHI.740.52	RE: Transport Oriented Development Program	19 Dec 23	UrbanTaskForce	Privacy
DPHI.740.210	Updated 9 Nov - TOD 54 comms sweep Nov 2023.xlsx	1-Nov-23	DPHI	Privacy
DPHI.740.235	Hon Paul Scully 18012023 Cumberland council rezoning	Unknown	Auburn MP	Privacy
DPHI.740.236	FW: Development Peaks Forum	30 Oct 23	DPHI	Privacy

(ii) *explanation of intended effects; and*

**There are no documents for the order.**

(iii) *community consultation.*

**There are no documents for the order.**

**Part (c)** *relevant information which the Minister for Planning and Public Spaces and The Cabinet Office relied upon to determine the location of the eight Transport Oriented Development Program accelerated precincts and the 31 Transport Oriented Development Program precincts where the Transport Oriented Development State Environmental Planning Policy applies.*

**There are no documents for the order.**

**Part (d)** *any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.*

**There are no documents for the order.**



## Office of the Hon. Paul Scully, Minister for Planning and Public Spaces

## ORDER FOR PAPERS – Transport Orientated Development Program

## PERSONAL INFORMATION

Document No.	Document	Date of Creation	Author	Privilege Claim Y/N?
20.b.i.1	Email from advisor from Office of the Minister of Planning and Public Spaces to Caucus Members - Caucus Pack - Transport Oriented Development (TOD) Program. Note attachment is publicly available	7/12/2023	Office of the Minister for Planning and Public Spaces	Yes / Part PI – personal information
20.b.i.2	Email from advisor from Office of the Minister of Planning and Public Spaces to the Office of the Member for Wakehurst - RE: SEPPs update. Note attachment is publicly available	12/12/2023	Office of the Minister for Planning and Public Spaces	Yes / Part PI – personal information
20.b.i.6	Email chain between DPHI and the office of the Minister of Planning and Public Spaces - FW: Briefing on planning changes in Barton Fed electorate	9/01/2024	Office of the Minister for Planning and Public Spaces	Yes / Part PI – personal information

## Department of Planning, Housing and Infrastructure



**SUBMISSION IN SUPPORT OF CLAIM FOR CONFIDENTIALITY AND PRIVILEGE BY  
THE DEPARTMENT OF PLANNING, HOUSING AND INFRASTRUCTURE  
ORDER FOR PAPERS ON 7 FEBRUARY 2024**

**Transported Oriented Development Program and proposed Transport Oriented  
Development State Environmental Planning Policy**

1. This submission has been prepared in support of the claims for privilege made, pursuant to Standing Order 52, by the Department of Planning, Housing and Infrastructure (**Department**) over documents responsive to the Order of the Legislative Council of 7 February 2024.
2. The Department makes this submission on the basis that the public interest in favour of publication is to enable oversight of the executive government by the Legislative Council (the superintendence function). If this submission is challenged, and additional public interest considerations are raised by the Member, the Department requests the opportunity to make submissions to the independent arbiter in response to the matters raised.
3. This submission for privilege is made on the grounds of public interest immunity – commercial in confidence, legal professional privilege and/or client legal privilege claims for NSW Government employees.
4. This submission was prepared on the basis that it will be published on the Parliamentary website. Descriptions of the documents in this claim are of a general nature. If the claim for privilege is challenged over any documents, the Department requests time to provide further confidential submissions that more specifically address the documents over which the privilege claim is challenged.
5. It is not in the public interest to publish the documents over which privilege claims are made for the reasons outlined below.

### Background

6. The Order for Papers captures documents relating to the scope and detail of the Transport Oriented Development (**TOD**) Program. The Department's TOD Program proposes to alleviate the NSW housing crisis through delivering housing around 39 transport hubs across the State.

5

7. The Department seeks to facilitate the TOD Program through a legislative amendment, being the Transport Oriented Development State Environmental Planning Policy (**TOD SEPP**). This instrument will increase the capacity for mid-rise housing and mixed-use development within 400 metres of 31 other appropriately located transport hubs and town centres. The legislative change has not yet been made and is presently the subject of consultation between the Department and councils.
8. Delivering greater housing across the State is the NSW Government's top priority. The proposed TOD SEPP represents the Department's commitment to delivering higher quality and well-located homes near transport hubs, community services and open spaces for the people of NSW.
9. There are two parts to the TOD Program:
  - a. Part 1 focusses on 8 precincts that will be rezoned to have higher housing and infrastructure capacity to deliver 47,800 new homes over the next 15 years, and
  - b. Part 2 will focus on precincts that have existing infrastructure and are currently located within 400 metres of 31 stations to create capacity for 138,000 new homes over 15 years.

### **Privilege claims**

#### Public interest immunity - commercial in confidence

#### Public interest immunity - prejudice the effective exercise by government of its legislative function

10. The Department submits that the documents (or parts of documents) identified and indexed as "commercial in confidence" should not be made public on the grounds of public interest immunity - commercial in confidence.
11. The Department submits that, in relation to documents **DPHI.740.28, DPHI.740.29, DPHI.740.30, DPHI.740.32, DPHI.740.33, DPHI.740.36, DPHI.740.38, DPHI.740.39, DPHI.740.44, DPHI.740.46, DPHI.740.191, DPHI.740.195, DPHI.740.197 and DPHI.740.203** a claim of public interest privilege is made on the basis that public disclosure of the information would prejudice the Government's proper functioning in identifying areas in which the supply of housing will increase, and the Government's ability to deliver critically-needed housing in these areas.
12. It is not in the public interest to disclose this information as it contains commercially sensitive information concerning the feasibility of varying dwelling capacity increases in different local government areas (LGA). As the specific numbers of dwelling increases in each LGA have not yet been publicly disclosed and the legislative change they relate to is presently under public consultation

and has not yet been finalised, prematurely disclosing these figures in assessing the viability of these areas would be prejudicial. It would affect future decisions of the Government including regulatory options available to deliver additional housing. This prejudice outweighs the public interest in publishing these figures.

13. For example, document **DPHI.740.33** assesses the impact on development feasibility and affordable housing dwellings to be delivered as a result of the TOD SEPP and associated changes to planning controls. It is submitted that these feasibility studies may unfairly prejudice the Government's hand in assessing the capacity of different LGAs to support higher housing targets, as well as unfairly and prematurely influence the real estate market by suggesting certain areas will be subject to a much higher dwelling uplift.
14. Other documents, such as **DPHI.740.46**, propose development uplift in areas that have not yet publicly been released such as Rozelle Bay. Publishing this material will impact the Department's ability to assess the feasibility of different LGAs for uplift and consequently impact the property market in these areas before they are considered feasible for this uplift. Document **DPHI.740.39** provides a detailed overview of several LGAs with different sensitivities (such as flooding and bush fire) and recommendations for future development of these precincts that are not yet publicly available.
15. Further, release of certain documents may jeopardise relations between State Departments: document **DPHI.740.44** contains comments between the Department and Transport for NSW (TfNSW) on the feasibility of uplifting development around certain stations, and the ability of different stations to handle higher capacities. Release of this sensitive information may prejudice the Government's ability to undertake transport impact assessments of current transport infrastructure and deliver any planned or proposed upgrades of these stations.

#### Legal professional privilege

16. The Department submits that the documents (or parts of documents) identified and indexed as privileged should not be made public on the grounds of the common law principle of legal professional privilege and/or client legal privilege under the *Evidence Act 1995*.
17. The foundations of a proper functioning legal system depend upon freedom of communication between lawyers and clients, which would not exist if either could be compelled to disclose what passed between them (*Baker v Campbell* (1983) 153 CLR 52 at 66 and 132) or if the protection was too easily overcome.
18. The Department makes the following claims of privilege:

- a. Legal advice privilege – confidential communications brought into existence for the dominant purpose of enabling the client to obtain, or the lawyer to give, legal advice (s.118, *Evidence Act 1995* (NSW)); and/or
- b. Documents that reveal legal advice sought or given – communications or documents prepared by a lawyer or client from which the nature of the advice sought or given might be inferred (*Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 at 569). Specifically, legal professional privilege is claimed over:
  - i. Correspondence between Department employees revealing proposed requests for legal advice; and
  - ii. Correspondence between Department employees revealing legal advice provided by internal or external lawyers and/or from which the legal advice can be inferred.

19. The Department claims legal privilege over these documents: **DPHI.740.47, DPHI.740.48, DPHI.740.49, DPHI.740.50**. These documents were created for the dominant purpose of legal advice and accordingly the Department seeks to claim legal professional privilege over them.

20. Claims are made over entire documents.

**Opportunity to make further submissions or discuss informally**

21. In the event of a dispute by a member of any claims made in these submissions, representatives of the Department are available to participate in informal discussions with the member. The Department would also appreciate the opportunity to provide more detailed submissions in the event of a dispute being referred to an Independent Legal Arbiter for report.

## Department of Planning, Housing and Infrastructure

Standing Order 52 personal information submission –  
Transport Oriented Development Program**1. Introduction and summary**

This submission has been prepared in support of the claims for maintaining the confidentiality of personal information, pursuant to SO 52(7). These submissions concern a document returned by the Department of Planning, Housing and Infrastructure (the Department) to the Order of the Legislative Council of 7 February 2024

**Summary of privilege claims**

The department makes the following claim for personal information on documents responsive to the Order:

- (a) in relation to documents listed in **Annexure 2** index of *DOCUMENTS RETURNED UNDER PARAGRAPH 7*, a claim is made that they contain personal private information under SO 52(7) and should not be made public without appropriate redactions being applied.

The Department makes this claim now to ensure it takes all possible steps to protect the privacy of individuals affected.

**2. Background**

The Order for Papers captures documents regarding the Transport Oriented Development Program and the consultation process.

Personal information

The documents described in the Paragraph 7 contain email communications between the Department and Urban Task Force members during the consultation process that identify the mobile telephone number and email addresses of the members of Urban Task Force and other external groups parties consulted with. One document in the index is a letter from a Member of Parliament with a mobile phone number included in the content. One document contains personal information relating to individual's' conflicts of interest. The information was recorded at a point in time. The Department submits that it is not in the public interest to release the information because it may be misunderstood or misinterpreted.

The Department notes that for the purposes of Standing Order 52, personal information which should not be made public unless it is in the public interest to do so includes mobile telephone numbers, private email addresses, residential addresses and other personal contact information.

The Department submits that it is not in the public interest to disclose personal information.

Arbiter the Hon Keith Mason AO KC, in previous disputes where a claim of privilege was made over personal information, placed emphasis on the personal information having been

disclosed in confidence or being of a nature that the person would not want it to be published.

The Arbiter has also, on several occasions, endorsed the agreement of members, who had initially disputed a claim of privilege, that certain personal "private" information be redacted, avoiding the need for the Arbiter to resolve such disputes.

### 3. Opportunity to make further submissions or discuss informally.

In the event of a dispute by a member of any claims made in these submissions, representatives of the Department are available to participate in an informal discussion with the member.

The Department would also appreciate the opportunity to provide more detailed submissions in the event of a dispute being referred to an Independent Legal Arbiter for report.

**SUBMISSION IN SUPPORT OF CLAIM FOR PERSONAL INFORMATION  
MINISTER FOR PLANNING AND PUBLIC SPACES  
ORDER FOR PAPERS – Transport Oriented Development Program**

In relation to all documents contained in the index of personal information, a claim of privilege is made on the basis of the documents containing information that is personal information, pursuant to Standing Order 52 (7).

The documents are a communication between a Ministerial Office and an agency and a communication with an external stakeholder (member of the public) and contain personal mobile phone numbers, signatures, personal email addresses and residential addresses.

The communications occurred with no expectation of being published and it is not in the public interest for the listed personal details of members of the public to be published.

These items are:

- 20.b.i.1 - personal mobile number
- 20.b.i.2 - personal mobile number
- 20.b.i.6 - personal mobile number

**PERSONAL INFORMATION SUBMISSIONS FOR RETURN TO ORDER: Transport Oriented Development Program**

This submission has been prepared in support of the claims for personal information made, pursuant to Standing Order 52(7), by the Office of the Premier over documents responsive to the Order of the Legislative Council of 7 February 2024.

It is not in the public interest to publish the documents over which personal information claims are made for the reasons outlined below.

**Personal information**

Personal information has been defined by Parliament in the *Privacy and Personal Information Protection Act 1998* as "information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion". That Act (and others, such as the *Government Information (Public Access) Act 2009*) ordinarily protects such personal information from public disclosure. In the context of Standing Order 52, this usual recognition of the privacy of personal information and the need for government to respect and uphold that privacy is a public interest which weighs against the public interest in disclosure of that information in many circumstances.

In relation to documents 10, 20, 30 and 40, a claim of personal information is made. The personal information is not publicly available and was received in circumstances where there was no expectation of publication. Documents 10 and 20 are communications between third party organisations and the Premier's Office, and contain email addresses and, in particular, mobile telephone numbers of third party individuals. Documents 30 and 40 contain the personal mobile telephone numbers of ministerial staff.

The publication of such information is not in the public interest because there is no probative value in the wide distribution of these personal details, there was no expectation on the part of the senders that their private details would be published, and in the case of documents 10 and 20, were these details to be published without notice or consultation in circumstances where the publication was not anticipated, the candour of communications with elected representatives would likely be impeded. In the case of documents 30 and 40, publication of the private personal contact details of ministerial staff would entail obvious safety risks.