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27 March 2024

Ms Susan Higginson MLC
Portfolio Committee No. 7 Chair
NSW Parliament
6 Macquarie Street
SYDNEY NSW 2000

Dear Ms Higginson

Re: Inquiry into the development of the Transport Oriented Development Program

Thank you for the opportunity to provide input into the Portfolio Committee No. 7 – Planning and Environment inquiry into the development of the Transport Oriented Development Program (TOD).

At the Ordinary Meeting of Ku-ring-gai Council on 20 February 2024, Council considered a report on draft submissions on the *Transport Oriented Development Program* and the *Explanation of Intended Effects: Changes to Create low and mid-rise housing* and resolved the following:

- A. *Due to the multiple issues cited and the highly destructive outcomes that would result from the proposal, Council does not support the EIE- low mid-rise housing proposal, nor the TOD proposal.*
- B. *That Council resolve to forward submissions on the TOD Program and the Low and Mid-Rise Housing SEPP provisions at **Attachments A1 and A2** to this report respectively to the DPHI, noting that the TOD submission is unchanged from that version was been forwarded to the DPHI as a draft on 31 January 2024.*
- C. *In addition, Council resolve to forward the specialist reports at Attachments **A5-A8** (inclusive) to this report to the DPHI to be considered as part of Council's formal submissions to both SEPP initiatives.*
- D. *That Council request the NSW Government to work in collaboration with local councils as per the intention of the National Housing Accord to deliver additional housing in line with strategic planning processes under the NSW Environmental Planning and Assessment Act 1979.*
- E. *That Council communicate to the NSW Government its willingness to provide for additional housing through a consultative planning process that delivers high quality urban outcomes and respects the built and natural environment.*
- F. *That the Acting General Manager be authorised to make minor changes to the submissions on the TOD Program and the Low and Mid-Rise Housing SEPP provisions where they are of a minor or editorial nature and otherwise progress the interests of Council consistent within this matter.*

Of the 31 stations announced in Part 2 of the TOD program, four are in Ku-ring-gai LGA being Gordon, Killara, Lindfield and Roseville. As such, this submission focuses on the issues and concerns Part 2 of the program only.

Whilst there is capacity to increase density within the TOD zones in Ku-ring-gai (Killara, Lindfield, Gordon and Roseville) infrastructure capacity, schools, open space, tree canopy cover and local services, which are vital elements of more liveable and sustainable communities do not appear to have been appropriately considered. The proposal also has a disproportionate impact on Ku-ring-gai's heritage by placing the highest density on land containing the largest concentration of significant

historic development in the area with 40% of land within 400 metres of four stations is listed as a heritage conservation area or a heritage item.

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

The proposed changes are massive and sudden in town planning terms. The document describing the changes, at just 4 and a half pages, does not contain sufficient detail to understand and respond to changes of this magnitude. The timeframe to provide comments is too short. The timeframe before implementation in April 2024 is unreasonable.

Council's submission on the TOD program was prepared by Ku-ring-gai Council staff, with the assistance of external independent consultants, and responds to document Transport Oriented Development Program dated December 2023 as well as briefings with Council staff (16 Jan 2024) and Councillors (24 Jan 2024).

A copy of the Council report, resolution and Council's full submission are **attached**. It is supplemented by letters of support from the following independent consultants:

- Hill Thalys Architecture + Urban Projects– Urban Design (Appendix 2)
- Lisa Trueman - Heritage conservation (Appendix 3)
- Land Eco Consulting – Ecology (Appendix 4)

A summary of Council's main issues and concerns as they relate to the relevant Terms of Reference of the Inquiry are outlined below.

Thank you for the opportunity to provide input into the inquiry. Should you require clarification on any aspects of this submission, please do not hesitate to contact Craige Wyse. Team Leader Urban Planning on 9424 0855.

Yours sincerely

Sam

Mayor Sam Ngai (Roseville Ward)
Ku-ring-gai Council

- (a) the analysis, identification or selection undertaken by the Government, the Premier's Department, The Cabinet Office or the Department of Planning, Housing and Infrastructure (Department) into:**
- (i) the eight Transport Oriented Development Program accelerated precincts**
 - (ii) the 31 Transport Oriented Development Program precincts where the Transport Oriented Development Program State Environmental Planning Policy (SEPP) applies**
 - (iii) any of the 305 Sydney Trains, Sydney Metro and Intercity stations within the Six Cities Region which were considered as part of any of the Transport Oriented Development Program locations**

Identification of Stations /Definition of TOD area

- 31 stations to deliver '138,000 new homes over 15 years'. If evenly distributed, Ku-ring-gai will receive 17,808 dwellings, or 4,452 per station.
- Stations selected on the basis of 'enabling infrastructure capacity close to transport station'. Only infrastructure assessed appears to be 'water and wastewater capacity'.
- The document describing the changes does not contain sufficient detail to understand and respond to changes of this magnitude and the government will not release evidence base on which the decision was made claiming "Cabinet-in-Confidence".
- For Council to undertake any proper master planning process for these precincts, any estimates made of net dwelling yields for each of the TOD areas in Ku-ring-gai and the assumptions around take-up rates for residential apartments and shop top housing need to be released.
- The 400m distance should not be measured 'as-the-crow-flies' (a simple circle around the station) as this does not reflect the street layout and pedestrian accessibility.
- The 400m should be measured using its definitions of 'accessible area' and 'walking distance' ('ped-shed' methodology).
- The suggestion by DPHI in the staff briefing that the SEPP should include clear maps of affected land is supported.

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

Relationship to Strategic Planning Framework

- The introduction of new State Planning Policies which override local planning controls are of concern, particularly at a time when broader Regional and District strategic planning required by the EP&A Act is well progressed. This is severely undermining the existing statutory strategic planning framework in NSW.
- There are no local government area housing targets that have been set for the TOD program. This makes incredibly difficult plan and deliver on the infrastructure requirements to accommodate this future growth.

Development Constraints

- The TOD SEPP ignores a best practice planning methodology. Council has undertaken exhaustive constraints analysis for its local centres including Gordon and Lindfield. The studies show that the Ku-ring-gai local centres are constrained with large areas within the TOD SEPP area having no potential for new housing.
- There is no evidence that a constraints analysis was undertaken by the Department to inform the decision to adopt this combination of development standards. As a result, dwelling yields could be significantly over-estimated.
- The TOD SEPP covers areas that are highly constrained and require careful master planning to accommodate any increase in density.

Alternate Council led strategies.

- For Council to undertake any proper strategic/master planning process for these precincts, the department must release their estimated net dwelling yields for each of the TOD areas in Ku-ring-gai and the assumptions around take-up rates for residential apartments and shop top housing. This makes it incredibly difficult to plan and deliver on the infrastructure requirements to accommodate this future growth. Council requests the Government provide the housing targets and supporting planning, economic or other analysis for these targets.
- The required master planning process for the 4 TOD precincts in Ku-ring-gai will be a significant and resource intensive undertaking for Council. Unlike the eight precincts covered in Part 1 of the TOD Program, there is no State Government funding or planning resources on offer to assist Council undertake this significant strategic planning exercise.
- There is no suggestion that an alternative would be implemented any other way than via a Planning Proposal in the ordinary manner. This would leave open a significant period (18-24 months) within which DAs under the TOD SEPP could be lodged, approved, and commenced.
- Council strongly recommends that the proposal is deferred to allow Council to put forward an alternative proposal after due consideration of local constraints, needs and community input.

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

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

Collaboration and consultation

- To ensure that the program delivers its intended outcomes, we emphasise the need for cross-government collaboration. Under the Local Government Act 1993, councils are expected work co-operatively with other councils and the State government to achieve desired outcomes for the local community. Local governments, with their direct knowledge of communities and the constraints and opportunities for sustainable residential development, must be actively involved in the planning and decision-making processes. The State government should work closely with councils on planning that addresses the issues resulting from increased housing density, such as traffic congestion, green space preservation and access to essential services.

- Community opposition is one of the major barriers to boosting housing supply through medium-density infill. Residents rightfully worry about infill harming their neighbourhood's character, eliminating green spaces, reducing privacy and increasing traffic. We urge the NSW Government to engage in meaningful dialogue with councils and communities, refine the policy to prioritise liveability and affordability, maintain robust planning processes to ensure local communities are consulted, uphold environmental and heritage protections and ensure that development is tailored to local contexts and needs. The policy changes will have an irreversible impact on the shape and character of our city. Whether it delivers on the intended outcomes or creates further problems for state and local governments depends on the Government's willingness to engage councils and local communities to address risks and concerns.

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

Heritage

- The proposal has a disproportionate impact on Ku-ring-gai's heritage by placing the highest density on land containing the largest concentration of significant historic development in the area.
- 40% of land proposed for highest density redevelopment within 400 metres of four stations is listed as a heritage conservation area or a heritage item. For Killara station, 83% of the affected land is heritage listed.
- This proposal directly impacts more than 530 listed properties, including more than 100 heritage items. More than 2,000 listed properties are impacted by the parallel proposal within 800 metres of these four stations.
- The heritage impact of the proposed density is heightened in Ku-ring-gai because of its distinct local history and heritage, where Ku-ring-gai's listed buildings are concentrated along the train line and are primarily low-scale houses in garden settings.
- The proposed increased density will irreversibly degrade the heritage significance of both the heritage items and heritage conservation areas because of the disparity to the existing low-scale historic built form and proposed removal of Council's capacity to refuse detracting development.
- Lacking any requirements to retain heritage significance, fabric or setting, the proposed increased density will instead incentivise partial or complete demolition of heritage buildings, over-scaled infill development and loss of garden settings.

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

Traffic and Transport

- The Transport Oriented Development (TOD) program offers no transport impact assessment from proposed increases in residential dwellings.
- Preliminary assessments by Council suggest traffic generation impacts from the potential additional residential dwellings (excluding impacts from any additional retail/business/community floor space) would be substantial, and there may not be capacity for further road network improvements over and above those foreshadowed in the Ku-ring-gai s7.12 Contributions Plan.
- These effects are likely to be exacerbated in the Gordon, Lindfield and Roseville centres, due to the close proximity of Pacific Highway and the T1/T9 North Shore Railway line presenting a constraint to local access, with limited crossing opportunities of the railway line and the Highway.

- The Low and Mid-Rise SEPP would result in a large number of new dwellings with poor access to transport, shops and services, resulting in cumulative traffic impacts to the TOD centres that have not been quantified.
- Maximum residential car parking provision is supported in principle but there is no information on the threshold or rate of provision, to be able to comment further.

Open Space and Recreation

- Ku-ring-gai is characterised by natural areas and bounded by National Parks but historical development patterns around the oldest areas around the local railway stations provided for relatively fewer local parks in the areas where densification has already been occurring and will be significantly increased under the TOD SEPP.
- Targets identified by the Award-winning Ku-ring-gai Open Space Acquisition Strategy are being realised through s7.11 contributions with the delivery of seven new open space but the significant new development will give rise to even greater unmet demand. Ku-ring-gai already designs all new parkland for intensive usage within a compact space at much higher cost than baseline embellishment because the cost of land at \$3-4,000/sqm metre prohibits acquisition beyond 2.75sqm/capita of additional residents – less than 1/10th of the established standard of 28.3sqm/capita and half of the prevailing provision of local parks (5.83sqm/p) at the time of the 2010-2012 rezonings. This programme of local parkland delivery must be supported to continue to cater for even more demand.
- The recently completed Ku-ring-gai Recreation Needs Study will guide delivery of Ku-ring-gai's open space and recreation needs and support a review of the s7.11 Contribution Plan, however, the growth predictions may now be significantly under-estimated as the implications of the TOD SEPP could be a potential increase in the resident population of up to 30% as compared to 5.1% between 2016 and 2021.
- The importance of local open space in supporting community well-being was firmly established during the recent COVID19 pandemic, consistently supported by Council's Community engagement. The provision of new parks in areas of new unit development fosters the creation of new local communities and becomes a local focal point.

Community facilities and Social Infrastructure

- Council is concerned about the potential strain on existing social infrastructure, and the impact of a lack of coordination between State and local governments.
- Based on the findings of the Ku-ring-gai Council Community Facilities Strategy 2018 and the dwelling figures used in the Government's TOD SEPP Program document, Council's existing undersupply of libraries and community facilities by a further 4,500sqm to a total of 14,500sqm.
- Typically, about 1/3 of the total costs of new facilities can be funded by section 7.11, leaving Council with a significant funding gap.
- Under the assumption that the program aims to deliver 17,800 new homes in the LGA, this equates to around 5,200 primary and 2,300 secondary places. While private schools would be expected to take some of these students, many would need to be accommodated in new or upgraded public schools.
- Proper planning and collaboration between state and local agencies will be required to ensure growth reflects the capacity of the area, and that schools and other social infrastructure are expanded alongside housing development.

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

Urban Forest and Tree Canopy Impacts

- Existing Canopy cover across the residential zones within the TOD areas is currently between 29% and 32%.
- Ku-ring-gai's Urban Forest Strategy has a target to increase canopy cover percentage in residential zoned areas up to 40%.
- This target was set based on the NSW government target and recognises the importance of canopy in improving the liveability and amenity in residential areas.
- Based on the modelling undertaken by Council the proposed development controls will result in significant loss of tree canopy.
- The proposal as it stands make it impossible to meet these canopy cover targets across the LGA.
- The preservation of tree canopies becomes a crucial aspect of reducing the urban heat island effect by providing shade, enhancing evaporative cooling, and fostering natural cooling processes. The TOD SEPP information raises concerns of an increasing urban heat island effect and a reduction of the mitigating factors.

Environmental impacts

- The proposed TOD SEPP raises substantial concerns related to its alignment with Ecologically Sustainable Development (ESD) principles and potential impacts on Ku-ring-gai's biodiversity, water management, and local environmental controls. Notably, the SEPP appears to prioritize housing density at the expense of biodiversity conservation, presenting inconsistencies with crucial state Acts, such as the *Biodiversity Conservation Act 2016* and the *Water Management Act 2000*. The lack of detailed environmental assessments further amplifies concerns about potential adverse effects on biodiversity and waterways.
- Scepticism surrounds the TOD SEPP's reliance on one-size-fits all planning which is inappropriate for Ku-ring-gai. The blanket application casts doubt on its ability to meet the desired standards for "good design" and liveability. To address these concerns, it is recommended to:
 - Explicitly state that local/site-based controls and merit-based assessments will remain applicable.
 - Increase the deep soil provisions.
 - Reducing floor space ratio (FSR) in the TOD SEPP
 - Ensure protection of all biodiversity/greenweb mapped areas.
 - Prioritise tree retention over replanting and offsets.
- These measures would help foster a balanced approach to increasing housing that upholds local environmental values, ensuring the proposed development aligns with environment and sustainability goals and safeguards the distinctive character of Ku-ring-gai inline with community expectations and Government policy.

(r) any other related matters.

Proposed built form and local character

- The 31 train stations subject to Part 2 of the TOD SEPP are within different LGAs with different local characters and physical attributes. The proposed set of uniform blanket pre-eminent controls for all of these areas, contain no apparent recognition of local character and no provision for the local character to be preserved.
- The TOD Program and the Low and Mid-rise SEPP purport to continue to allow "merit assessments". However, where any local (LEP & DCP) controls preclude or constrain realization of the 3:1 FSR and/or the 21m height non refusal standards then they would be of no effect.

- Most controls in the Ku-ring-gai LEP and DCP that are designed to protect local character, amenity, heritage, biodiversity and other special environmental areas, and therefore will reduce or preclude realization of the new height and FSR non refusal standards under the TOD SEPP.
- Any claim that there will continue to be opportunity for genuine merit assessment, taking into account those heritage, biodiversity and heritage matters that the residents of Ku-ring-gai have long said are important to them, is disingenuous at best.

Affordable Housing

- It must be emphasised that the delivery of additional medium to high density housing delivered in the Ku-ring-gai Local Government Area will not create affordable dwellings simply by reason of their existence. Existing land costs for the established houses that will be targeted for redevelopment range from approximately \$3,000 to \$4,000/sqm (rounded) at their current R2 zonings without any adjustment for the proposed significant uplift. While it is understood that the Productivity Commission is keen on “filtering” to address social and affordable housing, the unaffordability of housing for Key Workers will remain. This only serves to emphasise the need for direct Affordable Housing targets.
- While the proposed 2% affordable housing contribution is welcomed, it should be significantly increased to capture greater public benefit given the windfall profit to land owners that will be delivered through the provisions of TOD SEPP (for instance R2 0.3:1 increasing ten-fold to 3:1).
- The mandated Affordable Housing provision in the Part 2 areas must also be in perpetuity in the same manner as for the Stage 1 areas and formally dedicated to well-established Registered Community Housing Providers.
- The proposed 2% is inadequate to deliver any meaningful provision of affordable housing, especially of in-kind dedication, noting that only in-kind provision will have any timely impact on local needs. It is essential to incentivise in-kind provision, rather than effectively encourage the payment of a monetary contribution. As such, any alternative monetary contribution must be reflective of the actual land and property values contained within the catchment map pertaining to the specific station area in the TOD SEPP.
- The proposed 2% Affordable Housing component is too limited to reflect appropriate value-capture of the immediate and significant uplift in development potential in the targeted areas. This represents a major missed opportunity to increase the stock of Affordable Housing.