

Our ref: R20/0017#04 Out-36871

23 February 2024

Ms Kiersten Fishburn

Secretary

NSW Department of Planning, Housing and Infrastructure

By email: Kiersten.Fishburn@planning.nsw.gov.au

Re: Transport Oriented Development (TOD) Program

Dear Ms Fishburn

Thank you to your staff for their recent briefing to Local Government NSW (LGNSW) on the Transport Oriented Development (TOD) Program and for the Department's invitation to provide comments on this significant and ambitious reform.

Please be assured, as LGNSW President Cr Darriea Turley AM has confirmed in all her discussions and correspondence with the Minister for Planning and Public Spaces, that councils across the state are unequivocal about the need to address the housing crisis.

Councils are also committed to seeing the planning for this significant urban renewal and increased density done well, in a genuine, collaborative way which over time has proven to be the most effective way of establishing successful and sustainable communities. Councils have welcomed the opportunity to provide constructive feedback on the proposals, with the aim of giving them the best chance of optimising the outcomes and leaving a positive legacy of good planning for their existing and future communities.

National Housing Accord and Minister's commitment

The Australian Local Government Association (ALGA) is a signatory to the National Housing Accord (the Accord), and LGNSW recognises and supports the Accord and acknowledges the NSW Government's aim to deliver more diverse and affordable homes. As part of its response to the Accord, the NSW Government committed to work with local government, noting in the National Housing Accord implementation

schedules that it is 'considering a package of planning reforms, developed with local government'¹.

Contrary to these commitments, however, the TOD Program has been formulated with eleventh-hour engagement with affected councils and no community consultation prior to the release of the selected sites before a State Environmental Planning Policy (SEPP) comes into effect on 1 April 2024. This also comes at a time when the strategic planning functions of the former Greater Cities Commission have been resumed by the Department and substantial uncertainty exists about long-term strategic planning outcomes.

LGNSW welcomed the Minister's initial commitment, in June last year, that local government would be involved in developing the framework to address the housing crisis. It is therefore disappointing that there is no evidence the Department has consulted councils and perhaps more importantly, the communities that they represent during its six month formulation of the TOD Program or that any visible regard has been given to the thousands of hours' of strategic planning work done by councils to facilitate the market's delivery of previous housing targets.

The primary purpose of this submission is to highlight the headline issues of concern with this approach and suggest a way forward that would allow the Department and councils to work constructively and within agreed timeframes towards meeting the Government's Accord commitments. The submission draws heavily on feedback from and broad consultation with councils.

Key concerns for local government

Aside from the locally specific and technical planning merit questions around the TOD Program, which councils have detailed in their submissions, there are fundamental concerns within local government which are more universal and follow consistent themes.

LGNSW wishes to highlight the following key issues:

Absence of strategic vision - strategic planning following legislation instead of informing it

The TOD Program replaces the strategic framework with 39 hotspots across the Six Cities Region, proposing to create capacity for 185,000 new dwellings over 15 years². The Department's approach to uplift the controls at speed and then require councils to

¹ [NSW - National Housing Accord - implementation schedule \(treasury.gov.au\)](https://www.treasury.gov.au)

² 47,800 new dwellings through rezoning around the 8 priority transport hubs and 138,000 new dwellings through changes to planning controls around the 31 other stations.

retrospectively complete a planning strategy that reflects or exceeds these controls is counter to proper and orderly planning.

Councils have highlighted in their submissions a multitude of strategic planning projects recently implemented, underway or proposed, that can equally or better achieve the objectives of increasing infill development in the most optimum locations. Unfortunately, this work appears not to have been considered in the 12-page document outlining the TOD announcement.

Together with the absence of updated housing targets and the promised Region and City Plans, the process disregards the carefully considered strategic planning work undertaken by councils in consultation with their communities and the Department to deliver agreed housing targets tailored to the characteristics and capacity of different places.

Councils have reported that the TOD program may require them to divert resources away from implementing their housing and other strategies which have already been endorsed and approved by the Department and formally “made” through the lengthy Local Strategic Planning Statement processes. This would be a regrettable unintended consequence of disregarding the local master planning work that is already well-progressed.

Fundamentally, councils cannot plan to accommodate this new growth without a target to aim for. While LGNSW acknowledges the urgency of these changes, providing local government with their housing targets and agreeing on appropriate timeframes to undertake the planning necessary to meet the agreed targets would lead to far better overall outcomes.

Recommendation 1: *The NSW Government should fulfil its commitments - made in the National Housing Accord and by the Minister to the LGNSW President - to work with councils, where they have requested to do so, to develop planning and land-use provisions that will reliably and efficiently enable housing supply in line with agreed updated housing targets.*

No details about infrastructure provision

Infrastructure capacity and timely provision are some of the most critical elements if the Government is to achieve its delivery targets under the Accord. The cumulative impacts on infrastructure capacity of these changes - combined with the blanket permissibility provisions for density uplift under the Explanation of Intended Effect for *Changes to create low and mid-rise housing* (the EIE) and additional affordable housing bonuses already in place under the Housing SEPP - will be immense.

In planning to accommodate 185,000 new dwellings in the TOD precincts alone, communities cannot afford the consequences of the NSW Government failing to appropriately consider infrastructure planning, sequencing and investment. This issue is of course further complicated by the fact that dwelling numbers in any one location are currently uncertain noting the possibility of density bonuses that may be taken up at developers' discretion and so yield is ultimately unknown and thus infrastructure service requirements are unable to be modelled.

Further, the Department's documentation advises that the stations in the TOD program were selected on the basis of 'enabling infrastructure capacity close to a transport station'. However, no details have been made available about the capacity of state infrastructure such as schools, roads and health facilities or how the necessary infrastructure will be funded.

The documentation provides no information about the work required by councils to ensure their local contributions plans are updated and makes only a cursory reference to the Housing and Productivity Contribution (HPC) which commenced on 1 October 2023.

Councils continue to be restricted by a \$20,000 per dwelling cap on their s 7.11 contributions unless their plan is IPART-approved. There have been no changes to the capped rates since their implementation in 2010, either to reflect indexing or increased land acquisition and construction costs. This impacts councils' ability to deliver much needed infrastructure for their communities in a timely manner and they have had to rely on other sources to plug the infrastructure funding gap.

With the substantial infrastructure needed to support the anticipated increased density and growth under the TOD Program and the considerable accompanying land value uplift that will flow from this significant reform, it is opportune to remove the contributions caps within areas affected by the TOD Program or at a minimum, to update the IPART trigger thresholds and allow them to be indexed with inflation with a view to making them more reflective of current costs.

The Department's HPC Guideline notes the importance of having "a robust and transparent governance framework"³ for delivery of infrastructure funds under the HPC. The Department's proposed Infrastructure Opportunities Plan will be critical to the planning, sequencing and investment of infrastructure needed for the TOD Program. Although more details on the HPC governance framework were expected to be published in late 2023, no further details have been made available to date.

Recommendation 2: *The NSW Government should commit to removing the contributions caps on council contributions plans within the areas affected by the TOD*

³ [Housing and Productivity Contribution – Implementation Guideline \(nsw.gov.au\)](https://www.nsw.gov.au/housing-and-productivity-contribution-implementation-guideline)

program or at a minimum, to update the IPART trigger thresholds and allow them to be indexed with inflation.

Recommendation 3: *LGNSW and councils would like more information to understand:*

- *How the HPC funds collected from each new residential development will be allocated and prioritised, including the provision of HPC funding to support councils in delivering infrastructure that supports housing and productivity.*
- *What resources and funding will be allocated, and when, to assist councils to amend their local contributions plans.*

Lack of supporting evidence

Councils have been frustrated by a lack of detail available about the TOD Program. Given the scale and timeframe of this reform, the 12-page document released before Christmas was inadequate and disappointing. The absence of any details to understand the capacity of infrastructure in areas around stations selected for the TOD program, and the criteria used to select individual stations does little to build a constructive relationship with local government.

Councils were not involved in the selection of the stations for the TOD Program and have questions about the selection of some stations. For example, stations which have varying levels of service and train frequency appear to have been treated equally to those with more frequent and reliable services. The selection of stations and level of train services in Wollongong local government area illustrate this point.

Recommendation 4: *LGNSW requests that the NSW Government agree to release the studies and analysis undertaken by the Department, to make transparent the information about capacity of infrastructure in areas around stations selected for the TOD program, and the criteria used to select individual stations.*

Genuine consultation with local government and community is essential

Following announcement of the TOD Program in mid-December, the Department undertook targeted consultation with affected councils, giving them 25 business days over the Christmas holiday period to provide feedback, requiring submissions by 31 January 2024. It is disappointing that this extensive State led program which affects 39 transport hubs and proposes increased capacity for up to 185,000 new dwellings has disregarded the Department's own Community Participation Plan to "Consider holidays and other community events when setting dates for engagement initiatives"⁴.

Nonetheless, councils have risen to this challenge, providing comprehensive responses containing the analysis of their local areas and details of current and proposed master

⁴ <https://www.planning.nsw.gov.au/sites/default/files/2023-04/community-participation-plan.pdf>

planning. To optimise the chance of success, LGNSW would like to see a commitment to genuine consultation and an opportunity for public consideration and debate on the reforms before they are introduced.

Recommendation 5: *In the interests of transparency and good governance, the NSW Government should place the proposed TOD SEPP, along with all relevant supporting evidence (including modelling and key assumptions) on public exhibition, allowing stakeholders and communities a realistic timeframe to understand and consider the implications of the proposals, and make recommendations aimed at better outcomes.*

Provision of affordable housing

LGNSW supports genuine urban renewal reforms that will offer the potential for a step change in the provision of more affordable and diverse housing. The proposed 15 per cent affordable housing in perpetuity in the 8 Part 1 TOD areas and minimum 2 per cent affordable housing contribution in the 31 Part 2 TOD areas is a welcome first step but does not go far enough.

The sheer scale of uplift proposed in these reforms presents a one-off opportunity for meaningful policy reform to create significantly more affordable housing in perpetuity. They should be consistent across both parts of the TOD Program to comprehensively capture the windfall gains and value uplift these reforms will create.

Unfortunately, in identifying the sites prior to proper planning being undertaken the NSW Government has already signalled to the market the forthcoming uplift and examples are already being provided to councils of rapid speculation which is causing confusion with residents.

Recommendation 6: *The mandate for a minimum 15 per cent contribution for affordable housing (in perpetuity) should be applied to both Part 1 and Part 2 of the TOD Program.*

Added complexity and conflicting planning controls

The overlapping approach of multiple planning 'reform' announcements risks adding to an already complex planning system. In combination, the concurrent changes proposed in the TOD Program and EIE, along with affordable housing bonus provisions already in place and complying development provisions in the Low-Rise Housing Diversity Code - each with differing definitions, controls and application - are confusing for planning professionals and development proponents, let alone for landowners and the general public. For example:

- The application of walking distances to transport hubs and town centres versus a differing radius measurement in the EIE is inconsistent and confusing.

- The proposed 15 per cent affordable housing in perpetuity in the 8 Part 1 TOD areas and minimum 2 per cent affordable housing contribution in Part 2 TOD areas versus vague and unclear promises for affordable housing in the EIE is inconsistent and confusing.
- The inclusion of Heritage Conservation Areas in the TOD Program without explanation of how merit assessment will apply is confusing.
- The application (or not?) of Clause 4.6 of the *Environmental Planning and Assessment Act 1979* as to whether variations of the standard are permissible is confusing.

Councils are concerned that the increased complexity, confusion and unintended consequences of these multilayered provisions will risk causing delays in delivery of housing under the Accord, and ultimately, poor outcomes for communities.

The changes must be refined and clarified so that the average member of the public will be able to understand easily and simply what can and cannot happen in their street and what is permissible or possible on their property or on their neighbour's property.

Recommendation 7: *In consultation with councils affected by the TOD Program, the Department should simplify the provisions for all stakeholders in the planning system, by looking at ways to minimise the overlap, complexity and confusion of having multilayered provisions applying to the same area.*

LGNSW is very aware of the different voices currently in the housing and planning debate and acknowledges the challenges in attempting to solve issues that have arisen over decades and are not of this Government's making. To this end we acknowledge that the NSW Premier's TOD Program is without doubt a bold plan, but if implemented as proposed in the available documentation its execution will be blunt, unsophisticated and a missed opportunity to bring communities on the journey of 'doing density well'.

It will also lead to adverse outcomes for communities that are simply unnecessary. The scale and intensity of the housing and homelessness crisis is vast, and warrants all levels of government working in genuine partnership to achieve the best outcomes for the community.

LGNSW urges the Department to consider the detailed analysis and well-constructed responses provided by councils to meet the 31 January deadline, and commit to working constructively with LGNSW and councils to address the matters raised in this submission.

LGNSW acknowledges the Department's efforts to engage with affected councils on the TOD Program. In the spirit of the Government's commitment under the Accord to work with local government, we trust we can build a more constructive relationship as



which enables our sectors to work together to deliver the housing targets committed by the NSW Government under the Accord.

I look forward to your response on the above matters. Please contact me (T: 9242 4011; E: chiefexecutive@lgnsw.org.au) should you wish to discuss.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Reynolds', written in a cursive style.

David Reynolds
Chief Executive