

DRAFT SUBMISSION

Explanation of Intended Effect: Changes to create low-and mid-rise housing

February 2024





Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

TABLE OF CONTENTS

Opening	4
Recommendations	6
Key Issues	8
1. Lack of an evidence base - release details about modelling and assumptions	9
2. Release housing targets and allow councils to plan for increased housing and density	10
3. One size does not fit all - allow for councils to establish development controls ..	12
4. The proposal changes should make provision for affordable housing	14
5. Infrastructure plans need to be in place to support the changes	14
6. Align policies and standards to minimise confusion and unintended consequences	17
7. Recognise natural hazards and environmental constraints	19
8. Minimise additional complexity at development assessment stage	20
Conclusion.....	21

Opening

LGNSW welcomes the opportunity to provide input to the *Explanation of Intended Effect: Changes to create low-and mid-rise housing*. LGNSW understands the NSW Government is proposing these and other planning system changes to help meet the National Housing Accord target of 314,000 new homes by 2029 across NSW.

The National Housing Accord (the Accord) has been established to “bring together all levels of government, investors and the residential development, building and construction sector to unlock quality, affordable housing supply over the medium term”¹.

Councils across the state have been voicing their concerns about increasing instances of homelessness, shortfalls in the supply of social and affordable housing and high housing costs for some time. LGNSW has identified housing affordability as an advocacy priority and has been calling for the federal and state government to address the housing crisis including through submissions to numerous reviews and inquiries.

The housing issues we face are complex and will require actions and interventions across a wide range of policy settings, not limited to the planning system. Notwithstanding this, councils understand the importance of housing supply and that all levels of government and private sector have a role to play.

The changes proposed in the *Explanation of Intended Effect: Changes to create low-and mid-rise housing* have been developed in an effort to help deliver additional housing to meet commitments made under the National Housing Accord. They have however, not been developed with any level of appropriate input from local government to this time, contravening the NSW Government’s commitment under the Housing Accord to “Commit to working with local governments to deliver planning and land-use reforms that will make housing supply more responsive to demand over time”. The process of exhibition of the EIE, despite having its own issues, and greater engagement in the future, present a chance to rectify this situation.

While it is concerning that the proposed changes have not been developed in the spirit of the Housing Accord, they are also at cross-purposes with accepted frameworks and standards of integrated strategic planning, community participation and locally led planning set out in the *Environmental Planning and Assessment Act 1979*.

The proposed changes are significant and will, if implemented in their current form, represent a significant disruption to the planning system in NSW. While we acknowledge this may in fact be the intention, they risk sidelining communities and will undermine the extensive work undertaken and in progress by councils who are

¹ [National Housing Accord](#)

experienced in understanding the requirements for successfully incorporating increased density and supply in their area.

The proposed changes are ill-conceived, rushed and will increase complexity in the planning system, risking delivery of the NSW Government's commitments under the Accord. The very limited timeframe for comment, and the timing (exhibited over the Christmas and New Year period) is not sufficient given the scale and impact of the changes proposed. Apart from releasing a single document (with no supporting evidence) the NSW Government has made no attempt to meaningfully engage with the many communities it will affect.

This submission is informed by the policy positions of LGNSW and consultation with councils. The submission is also guided by LGNSW's policy platform² which highlights, among other things, the importance of:

- An efficient, fair, and locally led planning system.
- Local government retaining control over determination of locally appropriate development.
- Strategic plans that reflect the agreed planning outcomes from community engagement.
- State and Commonwealth Government growth plans and projects making upfront provision for efficient and streamlined delivery of associated local infrastructure.
- The removal of the cap on development contributions.

Please note this submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

² https://www.lgnsw.org.au/common/Uploaded%20files/Policy/2021_LGNSW_Policy_Platform.pdf

Recommendations

Recommendation 1: That the NSW Government agree to release the studies and analysis undertaken by the Department of Planning Housing and Infrastructure (DPHI), to make transparent the information about capacity of infrastructure and other matters such as feasibility, in areas where the changes will apply.

Recommendation 2: That the NSW Government explore and introduce policies such as the time-limited development approvals proposed in the TOD Program as part of implementation of the EIE proposals, to support construction to occur more quickly and deliver housing within the Accord. Failing this, the Government should consider regulatory reform options to discourage land banking and failure to deliver on approved planning proposals or consents.

Recommendation 3: That the NSW Government, before implementing the one-size-fits-all changes, adhere to its commitment to release updated housing targets and draft Region/City plans and undertake joint strategic planning with councils to deliver them.

Recommendation 4: That the NSW Government defer the proposed changes and work with councils to introduce development standards for low and mid-rise housing that are compatible with local context.

Recommendation 5: That the NSW Government should ensure that any changes to increase development uplift should make provision for affordable housing in-perpetuity.

Recommendation 6: That the NSW Government commit to removing the contributions caps on council contributions plans to make them more reflective of current costs, or at a minimum, updating the IPART trigger thresholds to be indexed with inflation.

Recommendation 7: LGNSW and councils would like more information about the Housing and Productivity Contributions framework 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.

Recommendation 8: That the Department work with councils to address identified areas of confusion and provide further clarification.

Recommendation 9: That policy changes underpinning different planning announcements should be aligned, consistent and avoid added complexity that could lead to subsequent risk of delay in development approvals and compromise delivery of more diverse and affordable housing.

Recommendation 10: That the NSW Government commit funds to enable the Department to make impactful and significant changes to the NSW Planning Portal with particular focus on improvements to the workability and operation of the Portal reduce the length of time the portal is adding to assessment timeframes.

Recommendation 11: That the NSW Government work with councils to ensure that areas with natural and environmental constraints such as flooding and bushfire are excluded from areas identified for increased density.

Recommendation 12: That the NSW Government make up front provision for essential trunk infrastructure, including for water supply, sewerage and stormwater capacity, and evacuation routes, in areas targeted for densification.

Recommendation 13: That the NSW Government work with councils to identify areas suitable for low and mid-rise housing, and in which local development controls would be applied to avoid increased complexity and delays in development assessment.

Key Issues

The *Explanation of Intended Effect: Changes to create low-and mid-rise housing* will apply to the Six Cities Region with some provisions applying across the state. The proposed changes, if implemented, will over-ride local planning controls and have significant impacts on the form of housing in all communities. In summary the changes proposed will:

- Allow dual occupancies (two dwellings on the same lot) in all R2 low density residential zones across NSW.
- Allow terraces, townhouses and 2 storey apartment blocks ('manor houses') near transport hubs and town centres in R2 low density residential zones across the Greater Sydney region, Hunter, Central Coast and Illawarra Shoalhaven (Six Cities Region).
- Allow mid-rise apartment blocks near transport hubs and town centres in R3 medium density zones across the six cities region.
- Set baseline 'non-refusal' development standards to encourage more low- and mid-rise housing in certain areas.

LGNSW's key concerns are:

- **Lack of an evidence base** - The EIE has been released with no additional information to support the proposed changes.
- **Delay in releasing housing targets** - The NSW Government has not released the updated housing targets it committed to or allowed for councils to prepare plans to meet them.
- **One size does not fit all** - The EIE proposes blanket standards across diverse areas which do not take account of differences in urban form across the state.
- **No provision for affordable housing** - The EIE proposes to increase development capacity without provision for affordable housing in-perpetuity.
- **No infrastructure plan** - The EIE imposes significant additional population with no planned infrastructure.
- **Increased complexity of the planning system** - The multiple policies, controls and associated guidelines as a result of proposed changes in this EIE, the proposed Transport Oriented Development SEPP and existing local plans will create additional complexity and confusion.

- **No consideration of natural hazards and environmental constraints** – The EIE does not exclude areas affected by floods and other constraints.
- **Relies on development assessment to resolve issues** – The EIE proposes that complex issues that would typically be addressed in strategic plans be resolved on a case-by-case basis at development assessment stage.

These issues are discussed further below.

1. Lack of an evidence base - release details about modelling and assumptions

Councils have been frustrated by a lack of detail available in the documentation following the Government's announcements. Many councils have highlighted there is development capacity in existing planning schemes, but that where approvals have been issued commencements have in many cases not occurred.

Despite the rhetoric that local government is a barrier to new housing provision, the NSW Government's official data³ has shown that the local government sector has continued to play its part, with councils meeting or exceeding state-approved targets for rezonings and housing approvals⁴.

Councils cannot control the take-up of the capacity the planning system provides. Issues relating to housing supply are impacted by a range of market conditions such as the ability for developers to obtain finance, costs of materials and labour shortages.

The NSW Government has not provided any real justification as to how the broadening of land use permissibility and increases to density proposed in the EIE will overcome these barriers, many of which are outside of the scope of the planning system. Policies such as the time-limited development approvals proposed in the TOD Program should be explored as part of implementation of the EIE proposals to support construction to occur more quickly and deliver housing within the Accord period. This is appropriate in the context of these proposals to extraordinarily broaden permissibility for density increases and create land value uplift on a blanket basis. Failing this, the Government should, at a minimum, consider regulatory reform options to discourage land banking and failure to deliver on approved planning proposals or consents.

The EIE has been released with no supporting evidence to demonstrate that the proposed controls will work in practice, deliver well-designed housing or a recognition

³ [Quarterly Insights Monitor 04 | Planning \(nsw.gov.au\)](#)

⁴ The NSW Government has quietly ceased publication of its [Housing Supply Quarterly Insights Monitor](#). This report had transparently outlined the range of important factors that can affect housing completions, including the planning system but also elements such as changing market conditions, difficulties accessing finance, developer priorities, shortages in materials and skilled labour.

that there is (or will be) infrastructure capacity in schools, hospitals, road networks, open space and other important community facilities.

An additional 112,000 new dwellings by 2029⁵ and significant population increases are anticipated to occur across the Six Cities Region with the proposed changes - ensuring there is sufficient infrastructure to support this growth is critical. Councils are required to undertake many studies to justify planning changes of a much smaller scale than is proposed in the EIE. This provides for councils and other agencies to consider and balance the wide range of matters involved when planning for growth and change in an integrated way and to plan for the forecast infrastructure needed to support it.

The lack of detail in the EIE about the capacity of infrastructure in areas captured by the proposed changes, and the criteria used to select them does little to build a constructive relationship with local government. For example, some centres which may be captured are not considered to be well-located relative to reliable, frequent and accessible transport services, other areas affected by the EIE are subject to flood, bushfire, or water and wastewater constraints.

Councils were not involved in the development of the proposed changes and many councils have identified concerns about the capacity of infrastructure in these areas to accommodate the anticipated dwelling increases.

Recommendation 1: That the NSW Government agree to release the studies and analysis undertaken by the Department of Planning Housing and Infrastructure (DPHI), to make transparent the information about capacity of infrastructure and other matters such as feasibility, in areas where the changes will apply.

Recommendation 2: That the NSW Government explore and introduce policies such as the time-limited development approvals proposed in the TOD Program as part of implementation of the EIE proposals, to support construction to occur more quickly and deliver housing within the Accord. Failing this, the Government should consider regulatory reform options to discourage land banking and failure to deliver on approved planning proposals or consents.

2. Release housing targets and allow councils to plan for increased housing and density

The stated objectives of the *Environmental Planning and Assessment Act 1979* (the Act), include object (c), Clause 1.3 *to promote the orderly and economic use and development of land*. Over the almost 50 years since enactment of this provision, this has been interpreted to refer to strategic planning.

⁵ [Diverse and well-located housing reforms – Fact sheet \(nsw.gov.au\)](https://www.nsw.gov.au/diverse-and-well-located-housing-reforms)

The Act establishes a framework for strategic planning in Division 3.1, comprising local strategic planning statements (LSPS) and a process for the preparation and making of regional and district strategic plans⁶. Under this framework councils' role is to develop local plans and development controls which give effect to housing targets and other requirements in regional and district plans.

Every council has a Local Strategic Planning Statement in place, and many have developed Local Housing Strategies. Councils have been proactive in responding to previously agreed growth targets with capacity in their existing plans providing for future housing uplift tailored to local conditions.

Ad hoc changes ahead of housing targets and Region and City Plans

The NSW Government, as part of the National Cabinet, agreed to a National Planning Reform Blueprint⁷ with planning, zoning, land release and other measures to improve housing supply and affordability, including as its opening statement: 'Updating state, regional, and local strategic plans to reflect housing supply targets'.

Housing targets form the basis of future strategic planning by the State and councils to ensure there is sufficient land and development capacity to meet housing needs. As foreshadowed by the NSW Planning Secretary in June 2023, the NSW Government's draft housing targets were expected to be released as part of the process of finalising the six City Plans, to "embed the new Government's rebalancing of population and housing growth for all 43 local councils and deliver on our commitments required under the National Housing Accord"⁸.

The Minister for Planning and Public Spaces also made it clear in introducing the Greater Cities Commission Repeal Bill, that one of the key outcomes would be that "the publication of housing targets before a strategic district plan has been prepared and published can occur [which] enables the Government to set expectations early and work with local councils to deliver on those targets."⁹

Rather than releasing the housing targets and draft Region and City Plans and working with local government under Accord commitments for delivering well located homes, the NSW Government has instead focused on ad hoc changes in the absence of targets, strategic directions and collaboration with councils. This has delayed proper strategic planning for future housing which could have met the Housing Accord commitment to work with local government on housing supply.

⁶ Referred to in the Six Cities Region Plan and City Plans

⁷ [Meeting of National Cabinet - Working together to deliver better housing outcomes | Prime Minister of Australia \(pm.gov.au\)](#)

⁸ [More planning resources to focus on delivery of new houses and infrastructure | NSW Government](#)

⁹ [parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/%27HANSARD-1323879322-137225%27](#)

Implications of delays to strategic planning

The provision of low and medium rise housing is in-principle supported by councils. However, the one-size-fits-all proposals in the EIE could potentially prevent greater density than is being proposed in areas in proximity to centres, because the EIE implementation does not allow councils to undertake their own precinct planning process.

In LGAs where councils' strategic and master planning is well-advanced, the aims of the Housing Accord may be better addressed by the Department devoting teams to work closely with individual councils, in the spirit of the Accord, to:

- understand the implications and shortcomings of the EIE proposals; and
- agree on a program to plan for additional housing prior to implementation of the EIE, in which councils can contribute to the Housing Accord.

Before implementing the one-size-fits-all changes proposed in the EIE, the NSW Government should set clear targets for mid- and low-rise housing, alongside the release of the draft Region and City plans, and allow councils to develop local responses, within agreed timeframes. The Department could assist councils by providing resourcing and support to enable these demanding timeframes to be met.

Recommendation 3: That the NSW Government, before implementing the one-size-fits-all changes, adhere to its commitment to release updated housing targets and draft Region/City plans and undertake joint strategic planning with councils to deliver them.

3. One size does not fit all - allow for councils to establish development controls

The proposed one-size-fits all is a blunt and simplistic approach which fails to give regard to well-considered, place-based planning and is contrary to principles of doing density well. It does not take account of the very different planning contexts and urban typologies across the state.

The proposed controls will override existing local plans and master planning work undertaken by councils to support growth and change that is sensitive to and builds local character. This is achieved by curating planning controls for building height and density, setbacks and landscaping that work with existing subdivision patterns and urban structure. Local planning allows for neighbourhood reconfiguration to include new streets and parks, coordination and augmentation of infrastructure and public domain improvements. It also considers the transition between areas undergoing renewal and existing development.

The EIE states that all other applicable planning controls allowed in Local Environmental Plans and Development Control Plans will continue to apply to the extent

they are not inconsistent with the new standards. However, it is likely that applying council controls will prove to be difficult. Some councils have noted that local controls such as landscaping and car parking which have been developed following detailed studies, cannot be achieved on small sites at the scale proposed in the EIE.

Councils have identified numerous technical and design issues with the non-refusal standards in the EIE and proposed changes to the Apartment Design Guide for mid-rise development.

Concerns about provisions for mid-rise housing include:

- The proposed FSR of 3:1 for mid-rise developments not fitting with the 6-storey development envisaged – a 3:1 FSR typically results in more than 6 stories.
- Lack of clarity about the methodology to be used to measure the respective 400m and 800m walking distances from station and town centre precincts.
- Reducing standards in the Apartment Design Guide for mid-rise development will reduce separation of buildings at the upper floors reducing visual and acoustic privacy between building and solar access to dwellings and the street.
- Removal of a requirement for basements to be designed to accommodate large vehicles including waste trucks – there is inadequate consideration of how waste is managed.
- Impacts of a low target for deep soil, tree planting and canopy

Concerns about low-rise housing provisions include:

- Impacts on streetscape and parking of multiple driveways which will be a feature of the low-rise forms of development allowed.
- Garages and carparking dominating street frontages.
- Loss of existing urban canopy and prevention of replacement canopy in both mid-rise and low-rise developments.

The proposed changes will likely result in poor quality developments that contribute little to the amenity of the residents they house or the quality of the places where they are built, with impacts across the city for decades to come. Greater density should not and does not have to be accompanied by poor outcomes for communities.

Recommendation 4: That the NSW Government defer the proposed changes and work with councils to introduce development standards for low and mid-rise housing that are compatible with local context.

4. The proposal changes should make provision for affordable housing

New housing supply must include affordable housing. The Six Cities Discussion Paper¹⁰ discussed a 10 per cent affordable housing target for new dwellings where there will be housing uplift. A requirement for councils to establish affordable housing contribution schemes, where they have not been progressed was also a condition of the state government's approval of many Local Housing Strategies.

The proposed changes provide for significant density increases across Greater Sydney and in regional centres but make no provision for affordable housing. The EIE states that the existing infill bonus provisions of the Housing SEPP will continue to apply and "the department is also proposing to work with local councils to introduce affordable housing contribution schemes (inclusionary zoning) on more land across the Six Cities where there has been sufficient value uplift".

LGNSW is not supportive of the bonus provisions of the Housing SEPP. The provisions provide generous density bonuses but only require the affordable housing to be provided for 15 years. Affordable housing should be provided in-perpetuity, as required under affordable housing contribution schemes. Many councils have progressed development of schemes, however the NSW Government's overly complex framework for establishing schemes has delayed establishment of schemes in many areas.

Implementing the proposed changes to provide widespread increases in development uplift without any requirement for affordable housing will result in significant missed opportunities to provide long-term affordable housing and undermine existing council affordable housing contribution schemes.

Recommendation 5: That the NSW Government should ensure that any changes to increase development uplift should make provision for affordable housing in-perpetuity.

5. Infrastructure plans need to be in place to support the changes

Infrastructure capacity and timely provision are some of the most critical elements if the Government is to achieve its delivery targets under the Accord. In planning to create capacity for 112,000 new dwellings by 2029¹¹, in combination with the further 185,000 new dwellings expected over 15 years from the TOD Program¹², communities

¹⁰ [The Six Cities Region: Discussion Paper, September 2022 \(greatercities.au\)](#), p 42

¹¹ [Diverse and well-located housing reforms – Fact sheet \(nsw.gov.au\)](#)

¹² 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.

cannot afford the consequences of the NSW Government failing to appropriately consider infrastructure planning, sequencing and investment.

Infrastructure planning is fundamental in land rezoning that will result in an intensification of land use and councils are ever mindful of local capacity constraints associated with urban infill when they undertake planning proposals that rezone land.

The EIE proposals bypass a conventional rezoning (or planning proposal) and give a green light to significant and widespread increases in development capacity without evidence or discussion about how the proposed changes will take into account the supporting infrastructure needed for the anticipated increase in demand.

Local infrastructure

On local infrastructure, the EIE notes that:

"Some changes may be needed to councils' current contributions frameworks to allow for anticipated growth. The department will work with councils to identify where further infrastructure planning and funding is required and accelerate that work to ensure it is in place at the right time. The best approach will depend on the current contributions framework in the area, anticipated growth and local infrastructure needs. Stakeholder consultation, including public exhibition, will be necessary before any changes are carried out."¹³

This statement fails to recognise the rigorous and regulatory requirements on councils to develop their contributions plans and the critical forecasting information that is needed to inform this work.

Councils are concerned that updating their local contributions plans will become more challenging as a result of the proposed EIE changes. Forecasting growth and development are critical in the process of preparing these plans - these forecasts inform decisions around infrastructure need. The lack of clarity in the EIE and the dispersed nature of the proposed capacity increases make it difficult to predict when and where the additional growth may occur and presents a risk that this growth will not be supported by the timely provision of local infrastructure.

This issue is further complicated by the fact that dwelling numbers in any one location are currently uncertain due to the possibility of density bonuses that may be taken up at developers' discretion under the Housing SEPP. Therefore, yield is ultimately unknown and infrastructure service requirements are unable to be modelled.

DPHI should dedicate resources and support to help councils update these plans before the EIE's broadened permissibility and non-refusal standards are implemented.

The EIE also fails to consider that existing infrastructure in urban areas may already be at capacity, or to appreciate the potentially costly provision of new additional infrastructure to respond to new demand. Councils continue to be restricted by a

¹³ EIE, p 35

\$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 and the considerable accompanying land value uplift that will flow (in parallel with the TOD Program) from these significant changes, it is opportune to remove the contributions caps in areas where the reforms apply. 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. This would also of course improve the efficiency of IPART's operations by reducing unnecessary work.

State infrastructure and Housing and Productivity Contributions

In supporting increased population in their areas, councils need to be confident that state agencies will provide the infrastructure required to support this growth in a timely manner. The new Housing and Productivity Contributions (HPC) provisions provide a promising opportunity to address one of the key barriers to increased densities to deliver housing targets – that is, timely provision of infrastructure.

Combined with the TOD program (in 39 locations) and additional affordable housing bonuses under the Housing SEPP, the cumulative impacts of these changes on critical state infrastructure will be significant. The EIE fails to provide evidence that the existing capacity of State infrastructure such as schools, roads and health facilities has been considered and planned for. It makes a cursory reference to HPC, noting that "From 1 October 2023, all residential development that intensifies land use (where new dwellings are created) will be subject to the HPC"¹⁴.

The Department's HPC Guideline notes the importance of having "a robust and transparent governance framework"¹⁵ for delivery of infrastructure funds under the HPC. The Guideline also confirms the NSW Government has committed up to \$1 billion over 10 years from the Housing and Productivity Contributions, which will be made available to councils.

The Department's proposed Infrastructure Opportunities Plan will be critical to the planning, sequencing and investment of infrastructure needed for its density reforms. LGNSW is to be part of an Urban Development Program – Oversight Committee which will inform "decisions on the allocation of money [which] will be made as part of the NSW Government budget process". Although more details on the HPC governance

¹⁴ EIE, p 35

¹⁵ [Housing and Productivity Contribution – Implementation Guideline \(nsw.gov.au\)](https://www.nsw.gov.au/housing-and-productivity-contributions-implementation-guideline)

framework were expected to be published in late 2023, no further information has been made available to date.

Councils are subject to a highly regulated and transparent framework as part of preparation of their local contribution plans¹⁶. Similar transparency should apply to HPC funds collected and expended for state and regional infrastructure. This should include publication of information about the quantity of funds collected from particular regions, a plan of how and where the infrastructure funds will be directed (the Infrastructure Opportunities Plan) and the development that has resulted in these contributions.

LGNSW requests the NSW Government provide information on HPC funds collected from new residential development created under this EIE, and the plan for the state and regional infrastructure (the Infrastructure Opportunities Plan) to support it.

Recommendation 6: That the NSW Government commit to removing the contributions caps on council contributions plans to make them more reflective of current costs, or at a minimum, updating the IPART trigger thresholds to be indexed with inflation.

Recommendation 7: LGNSW and councils would like more information about the Housing and Productivity Contributions framework 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.

6. Align policies and standards to minimise confusion and unintended consequences

All stakeholders - NSW Government, councils, developers and the community - agree on the need for a less complex and more streamlined planning system. The EIE, overlaid with multiple other Government announcements does the opposite.

Adding to this is a Planning Portal that continues to have significant functional shortcomings, even before the complexity of all the additional changes being introduced.

Councils have concerns that the changes will introduce more complexity, confusion and unintended consequences, which is counter to the Accord's aim of enabling the planning system to make housing supply more responsive to demand over time. They

¹⁶ [Local infrastructure contributions policy | Planning \(nsw.gov.au\)](#)

highlight the paradox of the subsequent risks of delays in development approvals and delivery of housing under the Accord, and ultimately, poor outcomes for communities.

Complex, inconsistent and confusing policies and standards

As discussed in section 2 of this submission, any planning changes that *are* introduced should be based on a sequential approach which is informed by strategic planning first, rather than a series of ad hoc announcements.

The overlapping approach of multiple planning 'reform' announcements risks adding to an already complex planning system. In combination, the concurrent changes proposed in the EIE and TOD Program, 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:

- Efforts to deliver any affordable housing will be hampered by inconsistent and complex policies with different standards applying in different areas:
 - The EIE contains scant and vague statements about "working with local councils to introduce affordable housing contributions schemes (inclusionary zoning)...where there has been sufficient uplift"¹⁷.
 - Current affordable housing bonuses that "encourage" 15 percent affordable housing delivery for 15 years¹⁸ (not in perpetuity) and overlaid with a proposed 15 per cent affordable housing in perpetuity in the 8 Part 1 TOD areas and a minimum 2 per cent affordable housing contribution in Part 2 TOD areas is inconsistent, complex and confusing.
- The application of walking distances to transport hubs and town centres in the EIE versus a differing radius measurement in the TOD Program is confusing.
- The relationship between proposed development standards and Heritage Conservation Areas (HCAs) is unclear and councils' inquiries to the Department about how assessment would work in practice have not been answered with any clarity.

The technical and design issues highlighted in councils' submissions (discussed in section 3 of this submission) threaten to over-complicate the existing system by introducing further conflict at the DA stage. Left unchanged they will result in further delays to housing delivery. This risk must be addressed in consultation with councils.

¹⁷ [Explanation of Intended Effect: Changes to create low and mid-rise housing \(nsw.gov.au\)](#), p 29

¹⁸ [In-fill affordable housing | Planning \(nsw.gov.au\)](#)

Uncertainty for all stakeholders

A key concern is that the proposals shift assessment of the impacts of non-refusal standards from the planning proposal (rezoning) process to the development application stage, where it would be tested on a case-by-case basis. This introduces considerable uncertainty for landowners, developers, the community, and consent authorities, resulting in more complex and delayed assessments, greater conflict and more appeals which are costly and time-consuming.

Landowners and developers will defer, reconsider or withdraw their short-term development activity to speculate and await potential further windfall gains.

Recommendation 8: That the Department work with councils to address identified areas of confusion and provide further clarification.

Recommendation 9: That policy changes underpinning different planning announcements should be aligned, consistent and avoid added complexity that could lead to subsequent risk of delay in development approvals and compromise delivery of more diverse and affordable housing.

Recommendation 10: That the NSW Government commit funds to enable the Department to make impactful and significant changes to the NSW Planning Portal with particular focus on improvements to the workability and operation of the Portal reduce the length of time the portal is adding to assessment timeframes.

7. Recognise natural hazards and environmental constraints

As councils have highlighted in their submissions, the proposed changes have the potential to significantly increase residential capacity in locations and communities where agencies such as Rural Fire Service (RFS) and Sydney Water have previously raised concerns about risks such as bushfire, flooding and sewerage capacity.

The EIE does not provide sufficient information to indicate how these important concerns have been addressed or the risks overcome. Tensions with other local controls, and an over reliance on local council development assessment to resolve matters like flooding, bushfire risk and other hazards, at the development application stage will create confusion and uncertainty, slow development application assessment and lead to poor safety and environmental outcomes for communities.

LGNSW understands the Department has advised councils that current flooding controls will continue to apply to all development where the low-rise and mid-rise housing reforms are proposed and that in areas of particularly high risk, the Department will work with Council's to exclude the relevant areas from the application of the proposed reforms.

It is not clear how this work will be resourced or whether the areas will be excluded before the proposed changes are implemented. It is likely to divert council resources away from their strategic planning and development assessment priorities.

Recommendation 11: That the NSW Government work with councils to ensure that areas with natural and environmental constraints such as flooding and bushfire are excluded from areas identified for increased density.

Recommendation 12: That the NSW Government make up front provision for essential trunk infrastructure, including for water supply, sewerage and stormwater capacity, and evacuation routes, in areas targeted for densification.

8. Minimise additional complexity at development assessment stage

LGNSW is concerned that the intersection between the non-refusal standards in this EIE, and council planning controls will introduce greater uncertainty for landowners, developers, the community, and consent authorities.

Many councils have identified significant issues with the non-refusal standards as they do not take account of differences in local circumstances such as lot sizes and topography, infrastructure provision and site contamination in the same way that councils do when proposing development standards as part of the planning proposal process.

The application of the EIE to heritage conservation areas without a strategic framework for managing the impacts, as would occur in a planning proposal or master plan, will result in uncertainty for developers, councils and communities and will be difficult to manage and resolve through the development assessment process.

Shifting the assessment of these impacts to the development application stage, where they would be addressed on a case-by-case basis, will result in inconsistent outcomes, unintended cumulative impacts and more complex and delayed assessments with appeals and counter-appeals that are costly and time-consuming.

This may delay viable housing projects that are ready for application and assessment. It is counter to the Accord's aim to make the planning system more responsive to demand over time and will likely impose further costs on councils.

Recommendation 13: That the NSW Government work with councils to identify areas suitable for low and mid-rise housing, and in which local development controls would be applied to avoid increased complexity and delays in development assessment.

Conclusion

This submission reinforces the local government sector's support for the NSW Government's focus on increasing housing supply through the delivery of more low-rise and mid-rise homes in the right locations. However, it must be done well and in genuine partnership with local government.

The NSW Government's multiple and overlapping announcements have been described by some as the largest changes to planning in a generation. They are without doubt a bold plan led by the NSW Premier. However, the spectre of the rushed introduction and one-size-fits-all approach to these changes is justifiably generating apprehension for some councils who have put in a lot of work over many years to plan for orderly growth and accommodate agreed housing targets.

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

To summarise, LGNSW supports actions to improve the supply and diversity of low and mid-rise housing and supports the intent of the proposed changes. However, we do not support the manner in which the labyrinth of changes has been introduced, because as currently presented, they:

1. Were **announced in isolation of the agreed strategic framework** for planning in the Six-Cities Region where the State sets targets and councils develop plans and strategies for government approval.
2. Show **no evidence of being developed in consultation with local government** nor efforts to acknowledge and build on the local strategic planning work already well-placed to deliver more and diverse housing.
3. **Disregard and override the locally developed strategic and master plans that have been prepared by councils to meet agreed housing targets**, in a way that is tailored to specific locational nuances and have already gained community endorsement.
4. Will provide widespread density uplift and increased dwelling capacity in the **absence of an infrastructure plan** and rely on councils having to scramble to review and revise their already-capped contributions plans.
5. Introduce density uplift and increased dwelling capacity **with no clear provisions for affordable housing**.
6. **Defy conventional principles of evidence-based planning and community participation**, which is disingenuous to the role of local government in the planning system and undermines public trust in 'density done well'.

7. **Introduce a one-size-fits-all approach** that does not respond to the constraints, opportunities and character of each local area, is contrary to the principles of 'density done well', with implications for amenity, safety, the environment, heritage and the carrying capacity of roads, services and infrastructure.
8. Contain **no evidence that flood constraints, bushfire hazards** or any other natural hazards and environmental constraints have been considered.
9. **Introduce further complexity, confusion and uncertainty that will have the unintended consequence of** slowing the delivery of housing, with more complex and delayed assessments, increasing conflict and appeals, and landowners and developers potentially deferring their short term development activity to speculate and await potential further windfall gains.

Councils want to work constructively with the Department to understand clear housing targets and look at how they can amend and accelerate delivery of their locally developed strategic and master plans. These are tailored to the specific locational nuances of local areas, factor in how infrastructure will be provided and funded, and importantly have already gained community endorsement.

LGNSW is calling on the NSW Government to acknowledge the work that has already been done by councils, commit to working with councils before these changes are implemented to ensure the proper and orderly planning for key infrastructure, and provide the evidence and modelling that demonstrates to communities that density will indeed be "done well".

For further information on this submission, please email policy@lgnsw.org.au.