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Endorsed by the LGNSW Board
on 06 September 2024

Mr Andre Szczepanski
Director Assessment and Systems Policy
Department of Planning, Housing and Infrastructure

By email: SystemsProductivity.Policy@planning.nsw.gov.au

EIE: Proposed pathway changes to support Transport Oriented Development

Dear Mr Szczepanski

Thank you for the opportunity to provide comment on the above Explanation of Intended Effect (EIE) for proposed pathway changes to support Transport Oriented Development (TOD). Local Government NSW's (LGNSW) comments on the proposed changes are set out below.

Please note that this submission is made in draft form, pending endorsement by the LGNSW Board. Any amendments will be forwarded in due course.

State Significant Development category for TOD accelerated precincts

To support the TOD program, the Department of Planning, Housing and Infrastructure (DPHI) is proposing to establish a new temporary State Significant Development (SSD) category for residential development valued over \$60 million located within the eight designated TOD Accelerated Precincts. The pathway will remain in place until November 2027, aiming to encourage lodgement of development applications (DA) within the five-year housing accord period.

As a principle, LGNSW objects to the continued and concerning trend by successive State Governments to remove local councils from the assessment process by lowering SSD thresholds.

Councils are supportive of measures to deliver more housing, but this needs to be done with due regard for the strategic plans that have been agreed upon by councils, their communities and the NSW Government.

This proposal is of significant concern to councils because the low threshold value assigned to determine what is 'state significant' means that many applications will be

determined by a state government approval pathway, bypassing local community participation and diminishing the role of local government and planning panels in the decision-making process.

Councils continue to raise concerns about the expansion of SSD in the planning system. This provision further removes decision-making from councils and their communities. Councils point to frequent instances of inadequate consideration of local planning, such as the provision for local infrastructure and consideration of local infrastructure contributions, when development is assessed under this pathway. As discussed later in this submission, the overall absence of detail in the TOD Program about how increased infrastructure needs will be assessed, planned for and funded is a major concern of local government.

A local DA pathway allows for appropriate conditions of consent to be applied to address and mitigate any local impacts.

As a matter arising from the expansion of the SSDA pathways in this and other areas, councils are reporting to us that they continue to be called upon to either provide assessment advice to the Department or to comment on formal reports as part of the assessment process. This work is currently unfunded for councils. As a result, ratepayers are subsidising the assessment work of the NSW Government rather than councils being able to charge a fee as per usual under the adopted fees and charges. In these circumstances it is appropriate that councils be allowed to charge a fee to the State for these services to allow for cost recovery. We would be pleased to assist with further consultation with the sector to advise as to the costs being incurred if that is of assistance.

Exemption from in-fill affordable housing provisions

DPHI is proposing to exempt development in TOD accelerated precincts from the in-fill affordable housing provisions within Chapter 2 of the Housing SEPP. The provisions provide a floor space ratio bonus of 20-30 percent and a height bonus of 20-30 percent for projects that include at least 10-15 percent of gross floor area as affordable housing.

Councils have been concerned about the complexity, confusion and unintended consequences of multilayered provisions between the various planning instruments that apply in TOD precincts.

LGNSW is not supportive of the affordable housing infill provisions (on the basis that permanent height and density bonuses should not be awarded for temporary affordable housing). Thus, LGNSW supports the exemption from these provisions in TOD accelerated precincts, particularly as the precincts will require a certain quantum of affordable housing provision in perpetuity.

A clear framework for affordable housing provision in both the TOD accelerated precincts and Tier 2 precincts must be prioritised. In precincts where affordable housing contribution schemes have not yet been developed, rezonings are being progressed with indicative rates of affordable housing. However, there is little evidence of how these have been derived. A robust, transparent and replicable method for determining contribution rates (and increasing them over time) is critical to ensure contributions are maximised in line with the development uplift proposed.

In addition, the NSW Government's commitment to delivering 30% social and affordable housing on surplus government sites must be upheld. LGNSW understands there are several government land parcels within TOD precincts.

We also acknowledge the Department's engagement with LGNSW and other key stakeholder organisations regarding work currently underway more broadly in to incentivise affordable housing by addressing development of affordable housing contributions plans.

Exemption from low and mid-rise housing reforms

The low and mid-rise housing reforms (LMR housing reforms) propose expanded permissibility of housing types and related planning controls in station and town centre precincts.

While the proposed changes have not yet been fully introduced, councils have raised concern about complexity and confusion if the proposed changes apply in TOD precincts.

The commitment in the EIE to fully assess the interrelation between the LMR housing reforms and accelerated TOD rezonings to reduce duplication and maximise housing potential is therefore welcome. However, the EIE contains no detail on how this will be done and what the impact will be. In the absence of any meaningful explanation of intended effect, any changes must be undertaken in close consultation with relevant councils.

Exemptions from certain concurrence and referral requirements

LGNSW understands there is potential to streamline local and regionally significant development within TOD accelerated precincts from concurrence and referral requirements.

The EIE proposes that concurrence and referral requirements that are not considered to be high risk be exempted, with the exemption established for a period of five years.

Individual councils will be best placed to advise on exemptions appropriate to the TOD precincts in their area.

Again however, the EIE does not contain any detail of the requirements that will be considered, nor explanation of intended effect of this proposal, and so cannot reasonably be commented on.

As a result, it is critical that:

- councils have the opportunity to review and endorse any exemptions proposed
- there is flexibility to review exemptions during the five year period, should feedback indicate the level of risk has changed, and
- the rationale (including risk assessment) underpinning specific exemptions is clearly documented and publicly available.

Alternative design excellence pathway

Councils understand the importance of timely DA assessment timeframes, however this should not come at the expense of delivering well-designed precincts and buildings for current and future communities.

The proposal in the EIE to develop an alternative design excellence pathway where a Local Environment Plan (LEP) requires a design competition is intended to “deliver faster DA timeframes combined with high-quality design outcomes”.

LGNSW understands this pathway is being developed by the NSW Government Architect and will involve a design review process and requirement regarding selection of architects.

It is critical that the NSW Government Architect consult closely with councils in the development of the design excellence pathway. Many councils have extensive experience working with design panels to deliver high quality development tailored to local circumstances.

The absence of local involvement risks long term harm to the quality and liveability of TOD precincts.

LGNSW opposes moves to bypass existing design excellence pathways.

Infrastructure planning and funding mechanisms

Infrastructure capacity and timely provision are some of the most critical elements if the State is to achieve its delivery targets under the National Housing Accord. The cumulative impacts on infrastructure capacity of the TOD program (combined with the blanket permissibility provisions for density uplift under the low and mid-rise housing changes and additional affordable housing bonuses already in place) will be immense.

Infrastructure planning is fundamental when rezoning to intensify land use, and as such councils are ever mindful of local capacity constraints associated with urban infill when they undertake planning proposals that rezone land. The Government's TOD program proposals effectively bypass a conventional rezoning (or planning proposal) and give a green light to significant and widespread increases in development capacity without any detail about how increased infrastructure needs will be assessed, planned for and funded.

New housing will require more than access to transport. New housing will increase demand for water and sewerage, schools, hospitals, sports fields and open space and other local services. It will also place cumulative pressure on state road infrastructure as well as specific pressure on local roads traffic and stormwater. In many locations this infrastructure is already at capacity, as has been highlighted by councils in their earlier submissions on the TOD reforms.

In planning to accommodate over 230,000 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.

The exhibited documents for the 8 accelerated precincts lack detail around commitments to State Government funding to deliver improvements to state and regional infrastructure. In the case of the Hornsby rezoning proposal for example, the EIE notes that State infrastructure upgrades and improvements will be subject to further detailed investigations and funding commitments and the infrastructure proposals and initiatives are indicative and subject to appropriate approval pathways and funding commitments for delivery¹. While the accelerated precincts EIEs note that the State Government has committed \$520m from the Housing and Productivity Fund to be spent on community infrastructure in the TOD precincts, they do not identify which projects will be allocated this funding.

While acknowledging the work that is proposed to be undertaken by the Urban Development Programs and the impact that may have on strategic infrastructure planning, councils are seeking greater certainty that essential supporting infrastructure will be delivered for future communities as part of the planned density

¹ [Explanation of Intended Effect \(EIE\) - Hornsby TOD](#)

increases in these precincts. This should be made evident and the infrastructure needed should be clearly planned for, ideally at the time of these rezonings, but if not at least in line with the approvals granted. This is critical not only for the building of healthy, active and prosperous communities, but also critical to ensuring the right price signal is to be sent to the market as to the value of the land they are being asked to buy/develop.

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LGNSW notes that for many of the proposed changes further work is required to develop policies and processes to implement them. DPHI must consult further with councils as these are progressed.

In addition, the key concerns set out in LGNSW's submission to the parliamentary inquiry into the development of the TOD program remain, and that submission is thus appended to this response.²

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Reynolds'.

David Reynolds
Chief Executive

² LGNSW submission in response to the Inquiry into the development of the Transport Oriented Development Program, [available online](#).