



Ku-ring-gai Council Submission

on

Transport Oriented Development Program
(Department of Planning and Environment - December 2023)

Endorsed by Council 20 February 2024

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Appendix 1 - Community Engagement Report

Appendix 2 – Hill Thalys Architecture + Urban Projects Opinion

Appendix 3 – Lisa Trueman - Independent Heritage Advice

Appendix 4 – Land Eco Consulting - Independent Assessment of Potential Ecological Impacts

Council Resolutions

At an Extra Ordinary meeting on 5 February 2024 Council considered a Notice of Motion from Councillors Smith and Wheatley and resolved, in part:

(Moved: Councillors Smith/Wheatley)

That Council:

- A. *Condemns the State Government for its irresponsible approach to planning for the future of the built and natural environment in NSW.*
- B. *Rejects the proposed changes to planning controls and demands that they be withdrawn with genuine consultation to be undertaken with councils and their communities, as intended by the National Housing Accord 2022.*

CARRIED UNANIMOUSLY

At the Ordinary Meeting of 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*.

(Moved: Councillors Smith/Wheatley)

- 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.*

CARRIED UNANIMOUSLY

1 Executive Summary

The TOD Program presents an ambitious vision for shaping Sydney and surrounding cities. Council acknowledges the Government's ambition to leverage Sydney's existing transport networks to create more sustainable, connected and accessible living environments for the growing population. While Council recognise the importance and potential benefits of increasing housing close to transport and amenities, we have concerns that the changes are being pursued in a manner that undermines local councils and communities and will place the long-term liveability of our cities at risk.

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.

This submission has been prepared by Ku-ring-gai Council staff, with the assistance of external independent consultants, and is responding 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 summary of Council's main issues and concerns are outlined below. This information 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**)

1.1 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.

- The proposed Part 2 of the TOD Program is clearly in breach of governments commitment under the National Housing Accord commitment: to ‘working with’ local governments to deliver planning and land-use reforms that will make housing supply more responsive to demand over time. What is being proposed is a top-down approach, imposing planning controls on local government.

1.2 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.

1.3 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.

1.4 Proposed changes to Planning Controls

The proposed building typology is not consistent with NSW Government's Apartment Design Guide

- The proposed TOD SEPP building controls (height 21m and FSR of 3:1) are inappropriate for an established suburban context with a single street frontages & no rear lanes.
- The proposed TOD building controls appear to borrow from the perimeter block apartment typology referenced in the Apartment Design Guide (ADG) on page 168 which in the ADG's own words are suitable for a "Former industrial area under transition into urban neighbourhood".
- The (ADG) provides example schemes for apartment typologies suitable for suburban areas undergoing transition from detached dwellings to residential flat buildings.
- The ADG examples are notably lower in building height and density than the TOD SEPP (FSR 1.0:1 & height 3-4 storeys), provide front setbacks consistent with established pattern in street, and deep soil provisions of 35-40% (ADG page 158 & 160).
- Council's analysis demonstrates that the building typology is inappropriate and should be reviewed to be consistent with the ADG.

The proposed controls represent a mismatch in maximum FSR and maximum building height.

- Council has undertaken modelling to demonstrate that the proposed controls cannot be made to work on typical blocks within the TOD areas in Ku-ring-gai.
- It will result in residential flat buildings containing apartments very low amenity that cannot comply with the ADG as well as a very a poor urban form.
- Council's analysis indicates that architectural modelling was not undertaken to inform the decision to adopt this combination of development standards.
- Council's analysis demonstrates that the 21m and 3.0:1 combination cannot work in a straight residential flat building typology and the FSR should be reduced with reference to the ADG

Implications for good design across NSW

- The ADG been crucial in improving the design quality of apartments in NSW.
- The proposal to amended ADG provisions to 'reflect the unique design challenges of mid-rise buildings' is of great concern.
- The ADG will continue to apply to all apartment design across NSW and not just within TOD areas or areas proposed under the Low and mid-rise housing EIE.
- Lowering the design standards in the ADG to accommodate this flawed mid-rise housing model will result in a decreased design quality for all new apartment across the State.
- If the Department must include variations to ADG design criteria to accommodate mid-rise housing, the changes should apply to TOD areas only.

1.5 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.

1.6 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.

1.7 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.

1.8 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.

1.9 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.

1.10 Infrastructure - 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.

1.11 Infrastructure – 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.

1.12 Infrastructure – 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.

1.13 Local Infrastructure Contributions

- Support for intensive redevelopment requires the funding and delivery of supporting infrastructure. The existence of railway stations does not mean that all supporting infrastructure is present or adequate. Community support for intensive redevelopment is reliant on the provision of adequate infrastructure and the concept that existing residents must subsidise new development while suffering a reduction in accessibility to road-based transport and parkland has long been a major barrier to new development.
- Ku-ring-gai's current s7.11 Contributions Plan, which is under review, levies for the provision of just 2.75sqm/capita of local parkland and that is possible only because of the cap exemption in the existing higher density Local Centres areas. Ku-ring-gai's s7.12 Contributions Plan which was reviewed in 2023, does.
- There has been no background data on the infrastructure assessments undertaken for the TOD SEPP provided to council. The review of s7.11 contributions plan relies on extensive supporting documentation and a fully costed works programme with demonstrable nexus to the increased demand to derive an appropriate defensible contribution rate that will be able to deliver adequate supporting infrastructure including local parks, community floorspace, intersection upgrades and

public domain works that cater for increased pedestrian, cyclist and vehicular activity in the same limited spaces.

- Ku-ring-gai Council is extremely concerned that the local infrastructure contributions arising from the immediate uptake of higher density redevelopment will result in inadequate provision for supporting infrastructure due to the lack of adequate time and resources to review the s7.11 Contributions Plan properly supported by accurate infrastructure impact assessment, the introduction of higher density in areas outside the existing exemption areas that are already zoned R3 and R4 and Business areas and the inability of s7.12 contributions at 1% to fund the acquisition of additional open space land in areas where land acquisition costs for even R2 zoned land average \$3-4,000/sqm without factoring in the uplift from the greatly increased development potential.

1.14 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.

2 Introduction

2.1 Information Reviewed

This submission is responding to document *Transport Oriented Development Program* date December 2023 as well as briefings with Council staff (16 Jan 2024) and Councillors (24 Jan 2024).

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. It is noted that the documentation only contains less than 5 pages of information on Part 2. While high level information on the selection process is provided in document, the detailed analysis has not been provided to Council.

As the TOD Program documentation provide little information on the proposed planning controls, Council has relied on the further detail on the 'Mid-rise housing model outlined in the document *'Explanation of Intended Effect: Changes to create low and mid-rise housing'* to inform this submission, as advised in the briefing with DPHI.

2.2 Context of planning in Ku-ring-gai

Ku-ring-gai has historically placed a strong emphasis on protecting the natural environment as well as the built and heritage character of existing urban areas and a measured approach to accommodating additional urban growth and development.

Covering 85 square kilometres, Ku-ring-gai is surrounded by three national parks (Ku-ring-gai Chase, Garigal and Lane Cove), giving it a distinctive natural geographical character and position. It is defined by its unique biodiversity and beauty with significant urban forests and tracts of local bushland as well as a visually significant tree canopy across both natural and urban areas.

Without the tall tree canopy and diversity of fauna, the Ku-ring-gai area would be indistinguishable from the many Sydney areas which have already been cleared of natural habitat.

The physical appearance of Ku-ring-gai, the connectedness of green leafy areas encompassing both public and private lands and the physical location of urban areas within a well-defined geographic boundary, have been critical contributory factors to the area's distinctive character and the Ku-ring-gai community's sense of place.

The most recent results from Council's community satisfaction survey (2021) found that 88% of residents believed it was important/very important for Council to maintain Ku-ring-gai's unique visual character and identity. Residents reported the area's natural environment and open spaces and sense of community the greatest strengths of the local area.

Ku-ring-gai is the birthplace of the National Trust of Australia (NSW) and Council and the community place great value on its significant built and natural heritage through heritage programs and policies to identify and protect Ku-ring-gai's heritage.

Managing new urban development and growth has been focused, well researched, applied and monitored – to protect the treed landscape character of the area and create an acceptable urban form, with a transition to adjoining lower forms of urban development emphasising quality architecture and urban design.

The high standard of development in the Ku-ring-gai area has been recognised through several design awards and commendations by the Australian Institute of Architects and the Urban Development Institute of Australia. Award winning policies such as *Thinking outside the Box* and the *Ku-ring-gai Open Space Strategy and Open Space Acquisition Strategy* demonstrate innovative approaches to managing urban growth and underpin the existing historical and traditional values of Ku-ring-gai. Best practice community consultation and land use planning have led to a robust planning framework to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai.

In response to the release of the NSW Government Housing policy documents, Council has undertaken an extensive process of communications and engagement with the Ku-ring-gai community to raise awareness on the state government housing policy which will have a significant impact on Ku-ring-gai and its community. This report is included as **Appendix 1** and provides a summary of these activities, specifically detailing community feedback captured via the survey.

2.3 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 (1). 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.

3 Key Concerns and Recommendations

3.1 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 strategic planning is well progressed. Division 3.3 of the *Environmental Planning and Assessment Act 1979* sets out the legislative framework for strategic planning in NSW. This framework provides a clear line of sight from the regional level to planning and delivery at the local level.

The Act requires the development of regional, district and local level strategic plans that include or identify: the basis for strategic planning in the region/district/LGA, having regard to economic, social and environmental matters; a vision statement; Objectives consistent with that vision; Strategies and Actions

for achieving those Objectives; and an outline of the basis on which the implementation of those Actions will be monitored and reported.

A key component of this framework is the local strategic planning statement, which provides the local response to the higher-level planning matters and objectives. The local strategic planning statement is also required to be consistent with a council's community strategic plan prepared under the *Local Government Act 1993*. Under this framework, local planning is supposed to be supported by NSW Government funding for implementation and infrastructure. This includes funding that accelerates planning processes for Councils and State infrastructure funding programs that align to growth.

Under recent amendments to the EP&A Act, the Planning Secretary is required to review the current Greater Sydney Region Plan—A Metropolis of Three Cities as soon as practicable after 1 January 2024 and submit a draft regional strategic plan that applies to the whole of the Six Cities Region to the Minister. This will then trigger reviews of the existing District Plans and Local Strategic Planning Statements.

The EP&A Act requires District Plans to include housing targets for the number of net additional dwellings required for each local government area in the district for the next 5, 10 and 20 years. This would in turn guide the development of Local Strategic Planning Statements and local planning responses for the provision of the required housing numbers.

While it is acknowledged that the EP&A Act allows the Planning Secretary to issue housing targets for a district before a draft district strategic plan is publicly exhibited, or change housing targets before the district strategic plan, no such local government area housing targets have been set for the TOD program. This makes incredibly difficult plan and deliver on the infrastructure requirements to accommodate this future growth.

It is of major concern that the proposed Part 2 of TOD Program is that it is being rolled out at a time when the review of existing strategic plans is imminent. This is severely undermining the existing statutory strategic planning framework in NSW.

The TOD Program is being driven by Housing Policy objectives rather than a the fully integrated economic, social and environmental vision and objectives contained in the regional, district and local strategic land use plans. The Department claims that TOD Program is being driven by and in response to the *National Housing Accord*. The Housing Accord contains a number of commitments for state governments including the following (p2):

*'Commit to **working with** local governments to deliver planning and land-use reforms that will make housing supply more responsive to demand over time, with further work to be agreed under the Accord.'* (emphasis added)

Part 2 of the TOD Program is clearly in breach of this commitment. What is being proposed is a top-down approach, imposing planning controls on local government.

3.2 Identification of Stations /Definition of TOD area

3.2.1 Selection of stations

Of the 31 stations announced in Part 2 of the program, four are in Ku-ring-gai LGA (Gordon, Killara, Lindfield and Roseville). This represents 12.9%, or just more than one eighth, of all development proposed under this Part.

Part 2 is intended to deliver '138,000 new homes over 15 years' (p2). If these are evenly distributed, this means that Ku-ring-gai will receive 17,806 new homes, or 4,452 per station without any commitment from the State Government for the infrastructure required to support this huge increase.

It is unclear how the (average) 4,452 homes per station been calculated — is it an ambition to be achieved or the outcome of capacity analysis? Each new home will require approximately 92m² of GFA (based on an 80m² average unit size allowing for slightly larger mix plus non-NSA GFA items such as corridors and party walls. 4,452 new homes will require 409,584m² of GFA. At 3:1, this will require 136,528m² of site area. This results in a density of over 300dw/Ha (326) net on-site. A single typical residential lot (20m x 50m = 1000m²) could be expected to accommodate approximately 30 units.

Stations for Part 2 of the TOD program have supposedly been selected on the basis of 'enabling infrastructure capacity close to transport station'. However, the 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.

3.2.2 Definition of TOD Area

The station precincts are described as being 'within 400m of the station.' The method of measurement is unclear. The physical extent of the proposed precinct is an essential spatial factor to understand. To relate to actual pedestrian accessibility and allow people to 'be able to live within walking distance' (p4), the 400m should be measured in a similar way to SEPP Housing using its definitions of 'accessible area' and 'walking distance' (SEPP Housing Schedule 10) ('ped-shed' methodology). Additionally, as railway stations are large structures, clarity should be provided on which part of the station is the 'public entrance' — is it the first structure associated with the station (for instance, a ramp), the first point of signage, the first point of pedestrian cover, or the first tap-on point? 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 and could conceivably include land which is much further than 400m walk from a station. The 400m circle approach is not supported for these reasons.

The suggestion by DPHI in the staff briefing that the SEPP include clear maps of affected land is supported. However, these maps should be provided upfront so proper analysis of potential impact can be undertaken.

Ku-ring-gai has had the benefit of long-term strategic planning. Three of the four nominated stations (not Killara) can be characterised as having a core of E1 Local Centre surrounded by R4 High Density Residential. Many E1 and R4 sites have been developed relatively recently under KLEP2015 (and precursors) and contain many larger buildings in strata ownership. Previous development will act as a constraint to new development under the TOD SEPP and reduce the number of sites that are available to be feasibly redeveloped.

3.3 Proposed built form and local character.

3.3.1 Inappropriateness of a “one size fits all” approach

The proposed building height of 21 m and FSR of 3:1 within a 400m radius of the nominated train stations in Part 2 of the TOD SEPP will likely result in a building footprint covering a very high proportion of the site (70-75%) meaning no front or side set backs and minimal rear setbacks:

- Producing a continuous urban building form
- Severely constraining on-site tree planting & landscaping opportunities
- Constraining provision of communal open space
- Resulting in minimal or zero building separation
- Resulting in privacy impacts
- Producing poor internal amenity, with resultant buildings unable to comply with ADG or Housing SEPP Chapter 4.

The above issues will be further compounded by the absence of any minimum lot size or lot width/frontage controls.

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-set controls for all of these areas, contain no apparent recognition of local character and no provision for local character to be preserved. While the proposal will continue to allow “merit assessments”, this will not include any local DCP or LEP control that departs from the Government’s mandated non refusal standards. Most in Ku-ring-gai will depart given that in most cases such local controls feature significantly lesser height and FSR outcomes compared to the non-refusal standards proposed in the TOD SEPP.

Further analysis of the proposed built form controls and their impact on the local character of Ku-ring-gai is contained in section 3.4 below.

3.3.2 Non refusal standards and conflicts with existing local controls

Whilst it is stated that new design criteria will be introduced for mid-rise residential apartment buildings, such as building separation, setbacks and communal open space provision, in light of the above, it is difficult to see how these will be achieved given the volumetric outcome and limited un-built upon site area that would result from a combination of 3:1 permissible FSR and a 21 m permissible height.

Should any local (LEP & DCP) controls preclude or constrain realisation of the 3:1 FSR and/or the 21m height non refusal standards proposed in Part 2 of the TOD SEPP, then they would be of no effect as they would be inconsistent with these new standards. It is considered that 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, will reduce or preclude realisation of the new height and FSR non refusal standards and will therefore not apply as they would be inconsistent with the new controls. This will mean that the scope of merits assessment will be greatly reduced, if not, completely negated.

At the very least, a Practice Note with further guidance, definitions and examples should be provided, particularly to address the concept of ‘not inconsistent with’ as this term creates a substantial grey area that will introduce issues of interpretation and tension within the approvals process

3.4 Proposed changes to Planning Controls

3.4.1 Proposed Planning Controls

The changes will allow:

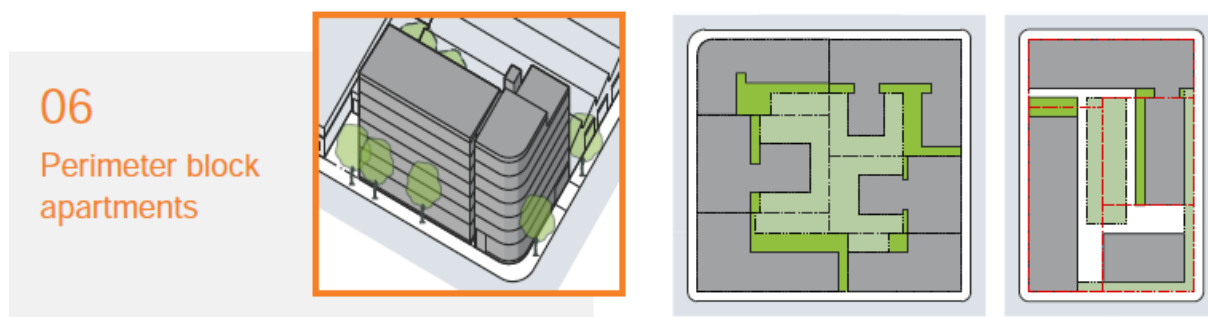
- Residential apartment buildings in all residential zones (R1, R2, R3, and R4) within 400m of Roseville, Lindfield, Killara and Gordon stations
- Residential apartment buildings and shop-top housing in local and commercial centres (E1 and E2) within 400m of Roseville, Lindfield, Killara and Gordon stations.

Proposed changes to planning controls:

- Maximum building height 21m (approx. 6 storeys)
- Floor space ratio 3:1
- No minimum lot size or lot width

3.4.2 Proposed building typology inconsistent with Apartment Design Guide

- *The Apartment Design Guide - Appendix 4 – Apartment Building Type* provides example schemes suitable for different contexts.
- The proposed TOD building controls (height 21m and FSR of 3:1) are consistent with the perimeter block apartment typology referenced in the ADG on page 168.



- The ADG notes this typology as appropriate for a *“Former industrial area under transition into urban neighbourhood; the site is located on a street corner and surrounded by industrial sheds and several new apartment buildings”*.
- Council has identified examples of this building typology at Meadowbank, a former industrial site, which are 6 to 7-storeys with an allowable FSR of 2.5:1 (image below)



Meadowbank, Sydney - HOB 6-7 storeys, FSR 2.5:1

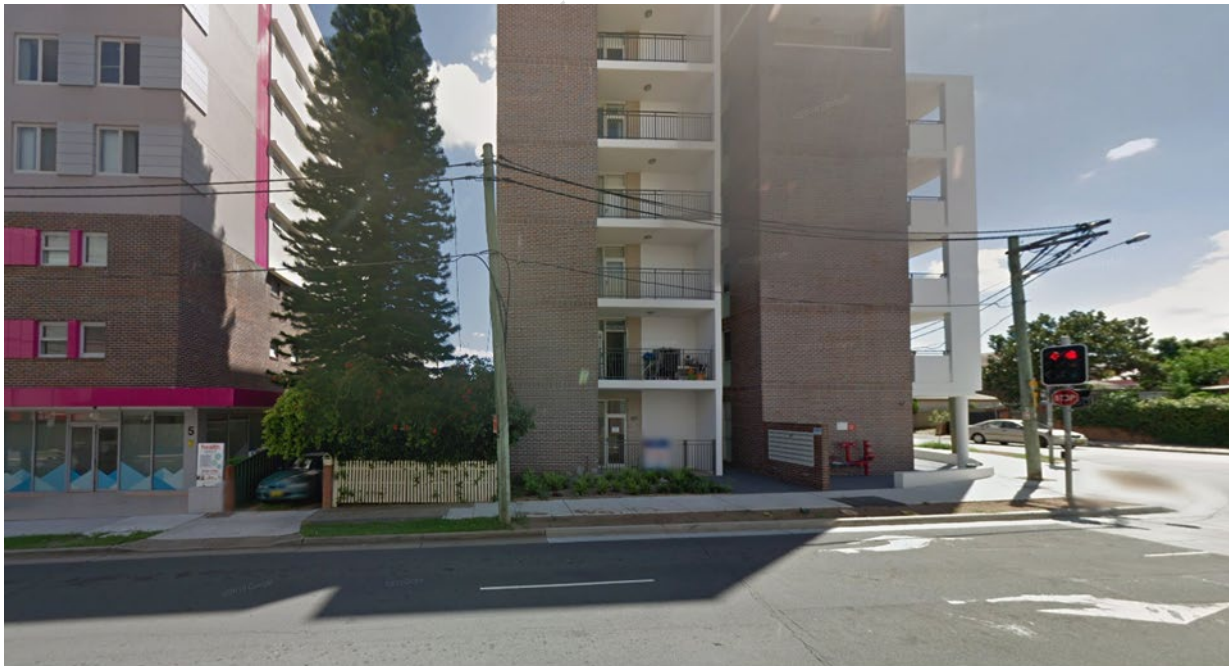
- This typology is not suitable for suburban streets such as Khartoum Avenue, Gordon (image below) Lynwood Ave, Killara or Roseville Avenue, Roseville (image below)



The lack of a minimum lot size provision will allow incremental and piece meal development in these streets resulting in single houses being left adjoining or surrounded by 7 storey + buildings as can be seen in the following examples on Wilga Street in Burwood.



Wilga Street, Burwood – single dwelling with development adjoining development built to property boundary



Wilga Street, Burwood – single dwelling with adjoining developments built to property boundary

3.4.3 Proposed building typology inappropriate for suburban infill context

The Apartment Design Guide - Appendix 4 – Apartment Building Types provides example schemes for apartment typologies suitable for suburban infill sites in locations with a single street frontage (no rear lane).

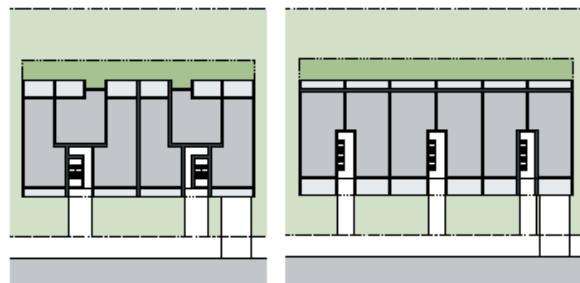
These examples are notably lower in building height and density than the TOD SEPP. Both typologies provide front setback consistent with established pattern in street; side setbacks of 3-4m; and rear setbacks of 6m-10m. (ADG page 158 & page 160).

Both examples have deep soil provision of 35-40% (ADG page 158 & 160).

3.4.3.1 Row Apartments

- FSR 1.0:1 & height 3-4 storeys (ADG page 160)
- ADG identifies this typology as suitable for a context where “a consolidation of three narrow residential lots, located in a suburban area undergoing an increase in density with a mix of detached, duplex, terrace and apartment buildings” (ADG, page 160)

02 Row apartments



Row apartment types are modular and can be adapted to fit various site widths. They are well suited to wide, shallow lots and typically have 2-3 apartments accessed off one common access core

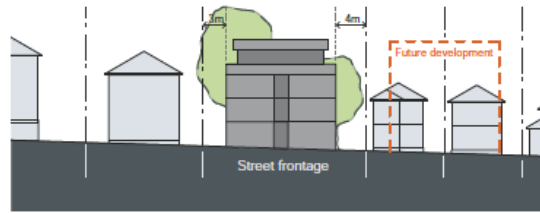


3.4.3.2 Narrow Infill Apartments

- FSR 1.0:1 & height 3-4 storeys

- ADG identifies this typology as suitable for a context where “Suburban infill site in an area undergoing transition from detached dwellings to residential flat buildings; the site is a consolidation of two detached housing lots” (ADG page 158)

01 Narrow infill apartment



Proposed development - Street elevation

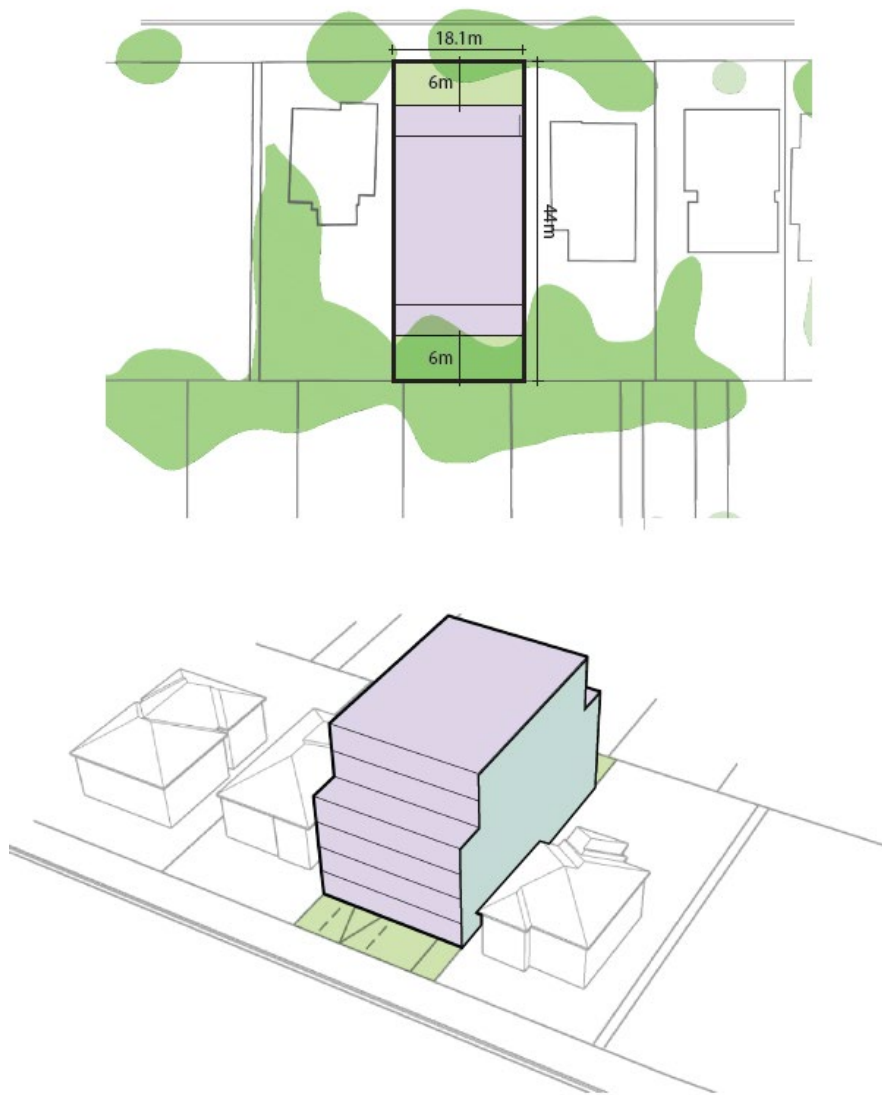


ADG Apartment Case Studies – Narrow Infill – 4-storeys & FSR 1.4:1

<https://www.planning.nsw.gov.au/sites/default/files/2023-04/watermark-apartments-huskisson-case-study.pdf>

3.4.4 The proposed controls represent a mismatch in maximum FSR and maximum building height and context

Council has undertaken modelling to demonstrate how the proposed controls may work on typical blocks within the TOD areas in Ku-ring-gai (images below)

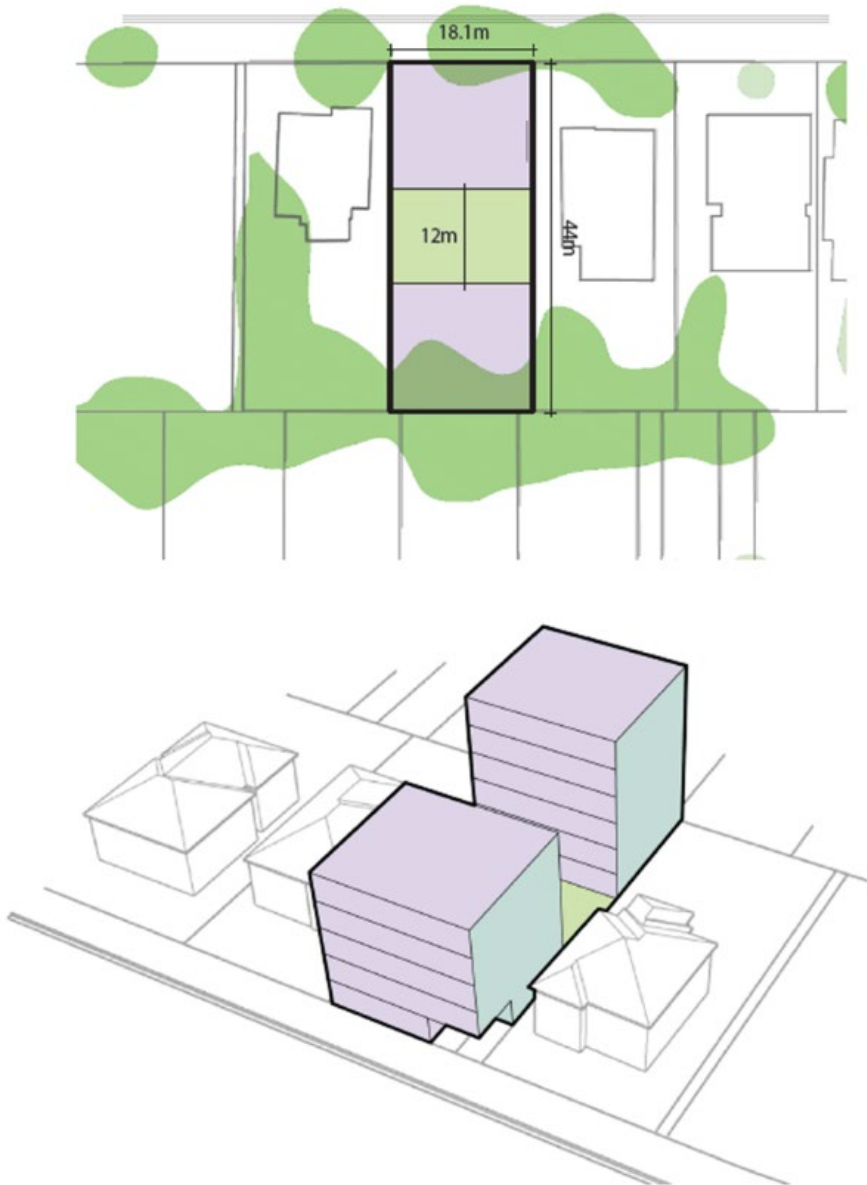


Option 1c - Front and Rear Setbacks Only 3:1 FSR 6 Storeys

Example 1 – two party walls

This option achieves FSR 3.0:1, the development would be built to side boundaries with blank walls, with 6 metre front and rear setbacks. Such a development is not currently feasible because:

- Not ADG compliant.
- A 32m deep building would result in high proportion of apartments located internally with no external windows.
- Would rely on internal lightwells for natural light and ventilation.
- Lot width would make it difficult to accommodate basement parking.

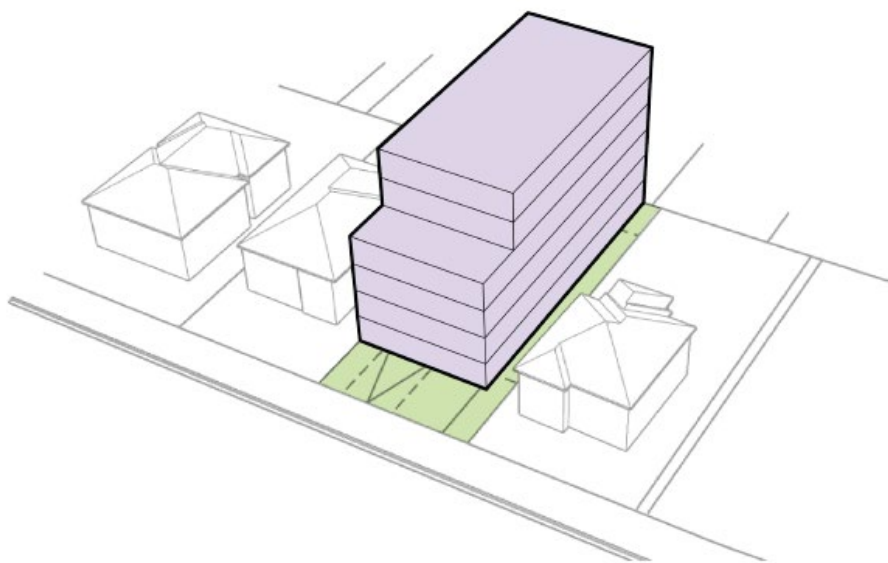


Option 1e - 12m Central Setback Only 3:1 FSR

Example 2 – four party walls

This option achieves FSR 3.0:1 and provides ADG compliant development solar access and ventilation with a 16 metre building depth. It would be built to side boundaries with blank walls, and 0 metres front and rear setbacks. Such a development is not currently feasible because:

- Lack of rear setback would sterilise future development on adjoining site to rear
- Complete loss of existing tree canopy cover across the site;
- Lot width would make it difficult to accommodate basement parking



Option 1f - 8m Front Setback and 2.5m Side Setback Only 3:1 FSR

Example 3 – one party wall

This option achieves FSR 3.0:1 and may provide ADG compliant development solar access and ventilation with a 15.5 metre building depth. It would be built to side boundary on one side with a 2.5 metre setback on the other side with blank walls, and 8 metre front and zero rear setbacks. Such a development is not currently feasible because:

- Lack of rear setback would sterilise future development on adjoining site to rear
- 2.5 metre setback on one side would require adjoining site to provide a 10-metre setback for ADG compliant building separation
- Lot width would make it difficult to accommodate basement parking

3.4.5 Implications for Good design

The analysis above of the proposed mid-rise apartment model demonstrates that there is a disconnect between with a height of 21m and an FSR of 3.0:1. It will result in residential flat buildings containing apartments very low amenity that cannot comply with the ADG as well as a very a poor urban form. Council would be very interested in seeing the architectural modelling the Department undertook informing the decision to adopt this combination of development standards.

The 21m and 3.0:1 combination may work for shop-top housing in a town centre setting with ground floor commercial floor space and active street frontages. However, it cannot work in a straight residential flat building typology and should be reviewed.

The ADG been crucial in improving the design quality of apartments in NSW. The Department's proposal to amended ADG provisions to 'reflect the unique design challenges of mid-rise buildings' is of great concern. The ADG will continue to apply to all apartment design across NSW and not just within TOD areas or areas proposed under the *Low and mid-rise housing* EIE. Lowering the design standards in the ADG to accommodate this flawed mid rise housing model will result in a decreased design quality for all new apartment across the State.

If the Department must include variations to ADG design criteria to accommodate mid-rise housing, the changes should apply to TOD areas only and should be located in the SEPP only. A precedent for how this could work is along the lines of SEPP Housing Clause 75 for build-to-rent. The SEPP could even nominate numerics where required (building separations, communal open space and landscaping). The ADG should not, and does not need to be, amended for SEPP TOD to operate.

3.5 Development Constraints

During preparation of Council's draft Housing Strategy planning and development constraints were analysed and mapped for Gordon and Lindfield Local Centres.

Mapping for Killara and Roseville was not undertaken as these did not form part of Council's staged Housing Strategy.

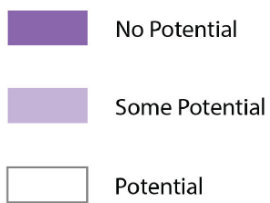
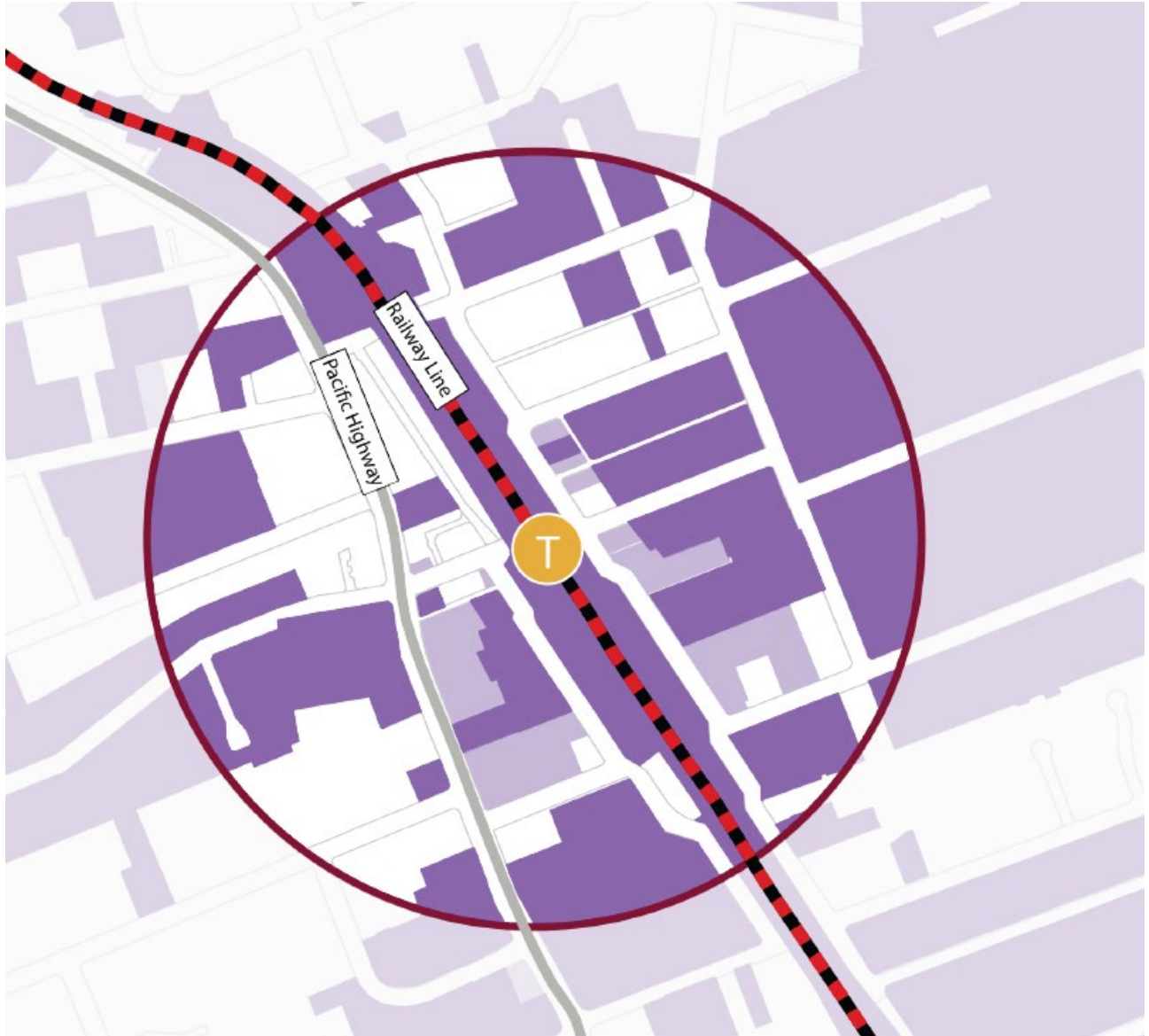
The diagrams below summarise the development constraints for the Gordon and Lindfield TOD areas, the key points to note are:

- No potential for new housing – these areas include all properties within HCAs and all heritage items; riparian lands, slope & bushfire constrained land; strata title properties less than 25 years old; core biodiversity lands, and land use constrained land.
- Potential for new housing - includes properties with 20% or more of the land area with support for core, landscape remnants and/ or biodiversity corridor. This category also includes strata title properties older than 25 years on the basis that there may be some potential for redevelopment subject to the suitability of the location and financial feasibility assessment.
- Potential for new housing - land with capacity for new housing including all areas not identified in one of the categories above. Subject to ground-truthing and site-specific design controls

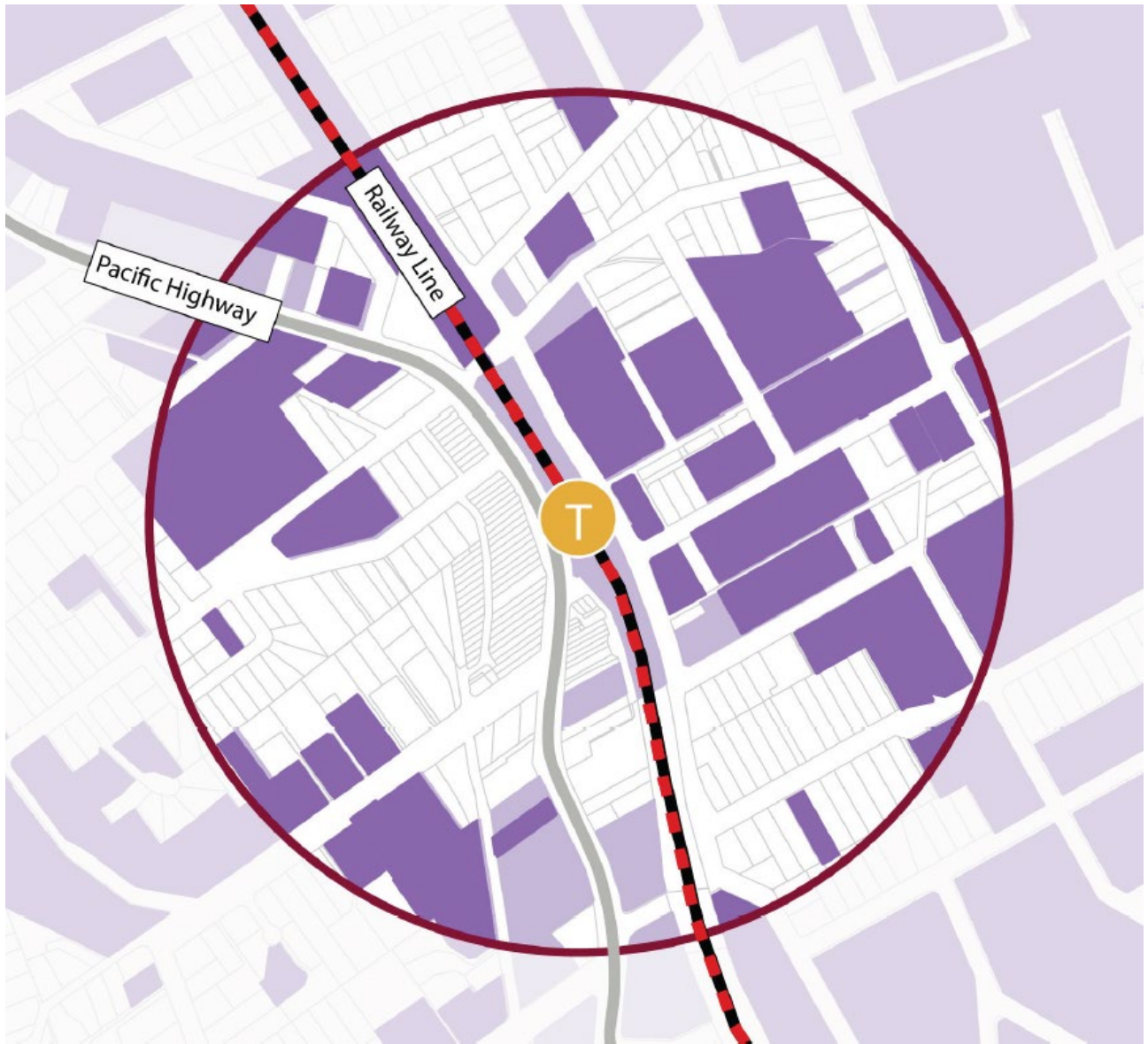
The key points to note are:

- Many sites within the TOD area are development constrained by one or more of the following:
 - biodiversity
 - riparian
 - bushfire

- steep land
- land use zone eg RE1
- strata title
- heritage
- The TOD SEPP covers an area that is highly constrained and requires careful master planning to accommodate an increase in density.



Gordon TOD Area – summary of constraints



- No Potential
- Some Potential
- Potential

Lindfield TOD Area – summary of Constraints

3.6 Urban Forest and Tree Canopy Impacts

Existing Canopy cover across the residential zones within the TOD areas is currently between 29% and 32%, as outlined in the table below.

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. The proposal as it stands make it impossible to meet these canopy cover targets across the LGA.

The TOD documentation does not indicate that retention of existing mature trees vegetation will be a requirement, nor does it specify any canopy cover or deep soil targets. However, reference is made to deep soil requirements outlined in the Apartment Design Guide, that contains a minimum requirement of 7% of site area. Given the proposed height and FSR, any canopy on site will be limited to the approximate deep soil area. Depending on the property size, this area may not even provide enough space to support the large, significant trees required to benefit highly urbanised areas.

Assuming that Tree retention will be treated as an environmental control that only applies to the extent that it is not inconsistent with the new standards, there is potential for a significant loss of canopy, up to 78% of the existing canopy across the TOD areas may be at risk.

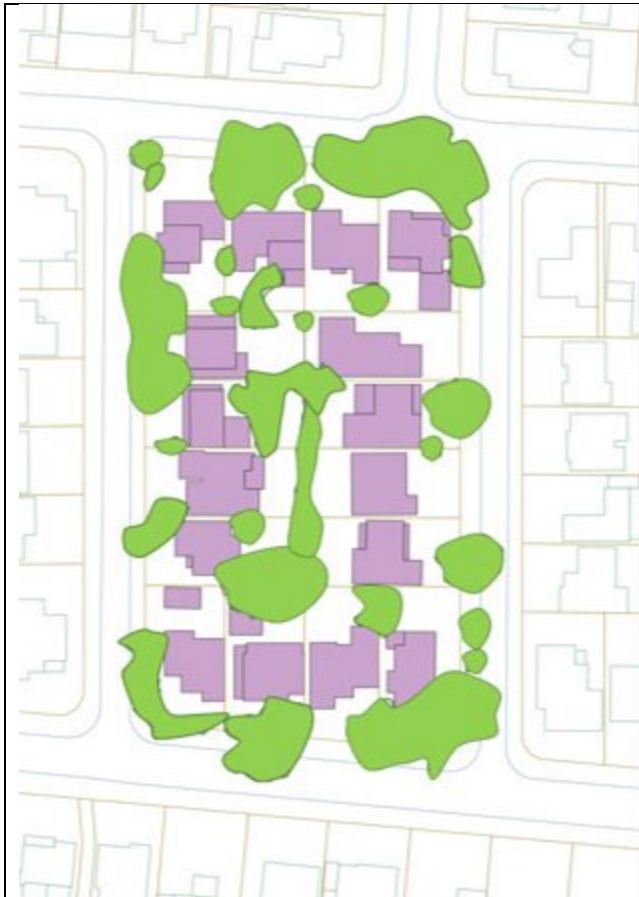
TOD Centre	Urban Forest canopy target 'R' zoned land (%)	Current average canopy cover 'R' zoned land (%)	TOD Canopy Target (%)	TOD indicative Deep Soil Target (%)
Gordon	40	32	N/A	7*
Killara	40	32	N/A	7*
Lindfield	40	29	N/A	7*
Roseville	40	31	N/A	7*

*minimum current Apartment Design Guide deep soil % of site area

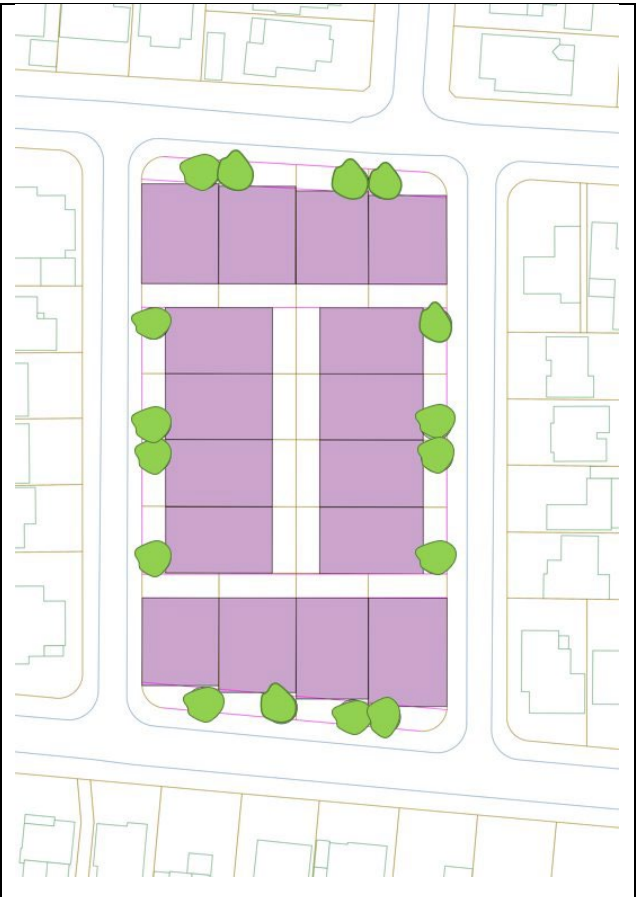
Based on the modelling undertaken by Council the proposed development controls will result in significant loss of tree canopy.

- The proposed density will make it impossible to retain existing trees on the site
- New development will have minimal landscape areas and deep soil
- There will be no room for large canopy trees within the development
- Frequent driveway crossovers accessing basements will result in loss of street trees

The diagrams show a typical residential block pre-development with an average 30% canopy cover and the same typical residential block post-development with 7% canopy cover.



Typical residential block – pre-development with 30% canopy cover



Typical residential block – post-development with 7% canopy cover

3.7 Heritage impacts

3.7.1 Heritage issues - Overview

Ku-ring-gai's heritage is distinguished by the uncommon consistency, quality and integrity of its primarily twentieth-century residential development. Ku-ring-gai's conservation areas and heritage items are characterised by largely intact single and two-storey houses from the Federation and inter-war periods, mature garden settings and original subdivision patterns. Many listed buildings are architect-designed. These historic buildings, sites and areas represent the historical development of Ku-ring-gai and its suburbs that followed the train line at a time when residential proclamations restricted other uses and land covenants commonly required high quality construction, well ahead of contemporary town planning or zoning.

The NSW Government is proposing widespread planning changes to increase housing in Ku-ring-gai and more broadly through the state. These are in two proposals for 'transport oriented development' (TOD) and 'low and mid rise housing', currently on NSW Government exhibition for Council-only or community comment. These NSW proposals for increased housing density have serious implications for the conservation of heritage in Ku-ring-gai, outlined below.

3.7.2 Direct heritage impact

The largest proposed increase in both building density and height is near train stations and local centres. This is where Ku-ring-gai's conservation areas and most significant historic development is concentrated. The distribution of the proposed density increase in relation to the heritage conservation areas and heritage items concentrated along the train line is shown in the map over the page.

This NSW proposal directly impacts the future conservation of all of Ku-ring-gai's 46 conservation areas and nearly 900 heritage items. The impact is two-fold by increasing densities that exceed existing built form, and removing Council's capacity to refuse development that detracts from the heritage significance of listed buildings and their setting.

The impact is in three tiers of proposed increased density across the council area. In areas currently zoned primarily for low density residential, the proposal is to permit: dual occupancies (locations shaded pale blue in following map), three-storey multi-dwelling developments (locations shaded blue in following map) and 6-7 storey apartments or 9 storeys with bonuses (locations shaded yellow in following map). Ku-ring-gai's listed heritage buildings in these areas are primarily single one or two-storey residences with established garden settings.

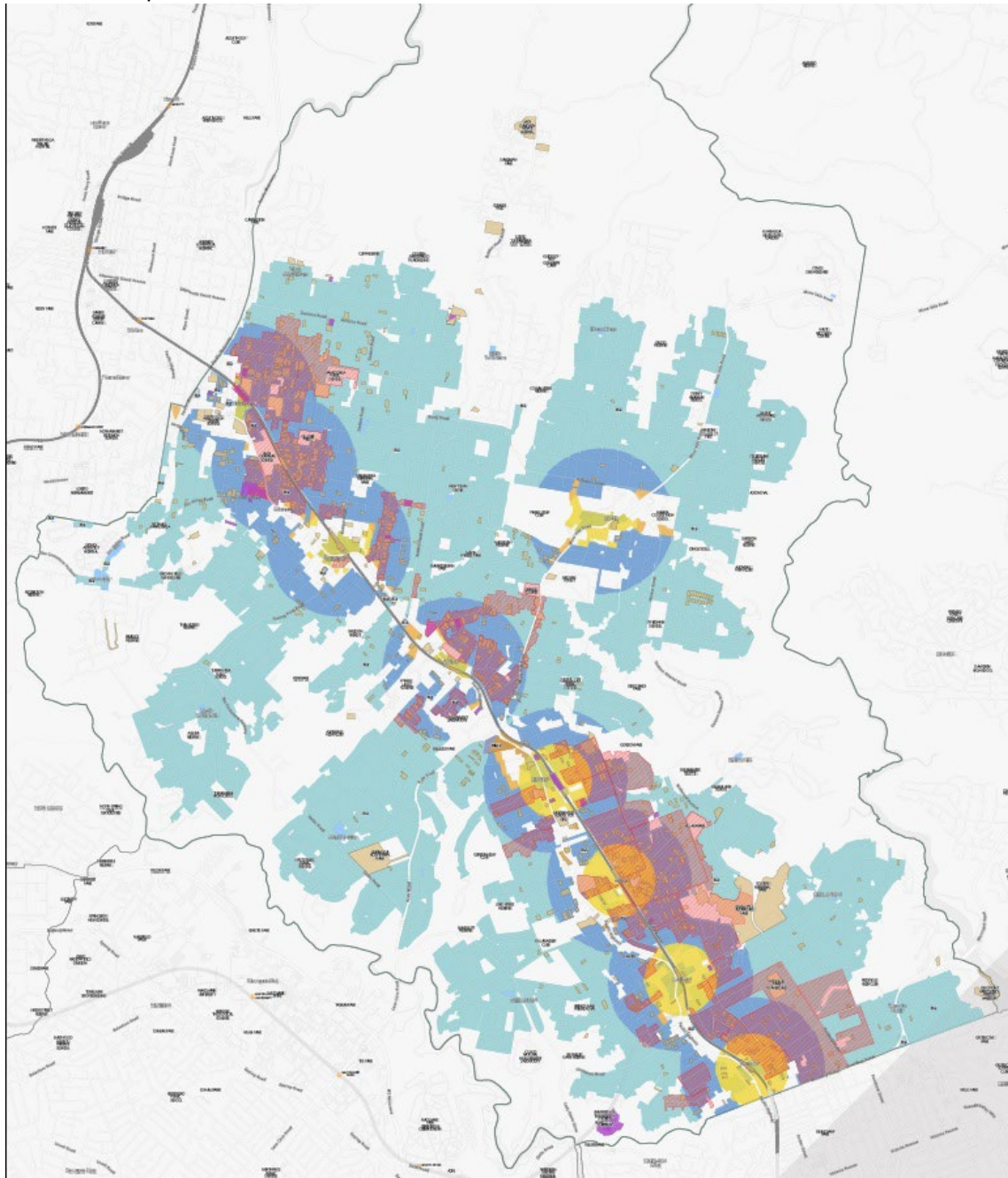
3.7.3 Scale of heritage impact

The two NSW proposals for 'transport-oriented development' and 'low and mid-rise housing' together endanger **more than 4,000 properties** in the Ku-ring-gai local area listed as a heritage item or within a heritage conservation area. This includes nearly 900 properties listed as heritage items. The term 'properties' here are counted land parcels.

More than 530 listed properties are within the proposed highest density around four stations designated 'transport-oriented development' alone, including more than 100 listed as heritage items. This increases to more than 2,000 impacted heritage listed sites within 800 metres of the same stations under the 'low and mid rise housing' proposal.

The proposal will have an excessive impact on heritage listed sites within Ku-ring-gai, including heritage conservation areas and heritage items. **40% of land proposed for highest density redevelopment near stations and local centres is listed** as a heritage conservation area or a heritage item.

The proportion of impacted sites that is heritage listed is as high as 83% for the 400 metre radius around Killara station, where 6-7 storey apartments are proposed. The Killara proportion of listed land is shown in the detail map below.

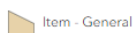


LEP - Heritage

HCA - Heritage Conservation Areas



HER - Heritage Items



TOD - buffer 400 metres



TOD - buffer 800 metres



Other centres - buffer 400 metres



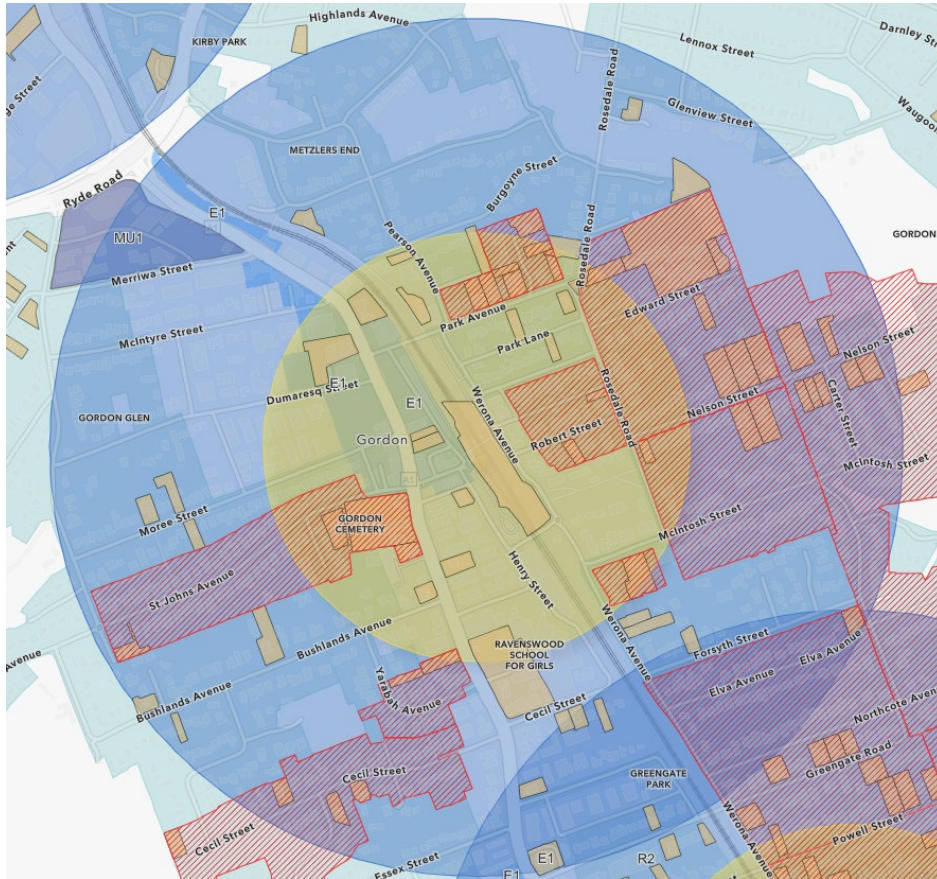
Other centres - buffer 800 metres



LEP - Land Zoning

R2 - Low Density Residential





- Other centres - buffer 400 metres

- Other centres - buffer 800 metres

- TOD - buffer 400 metres

- TOD - buffer 800 metres

- LEP - Heritage

 - HCA - Heritage Conservation Area:

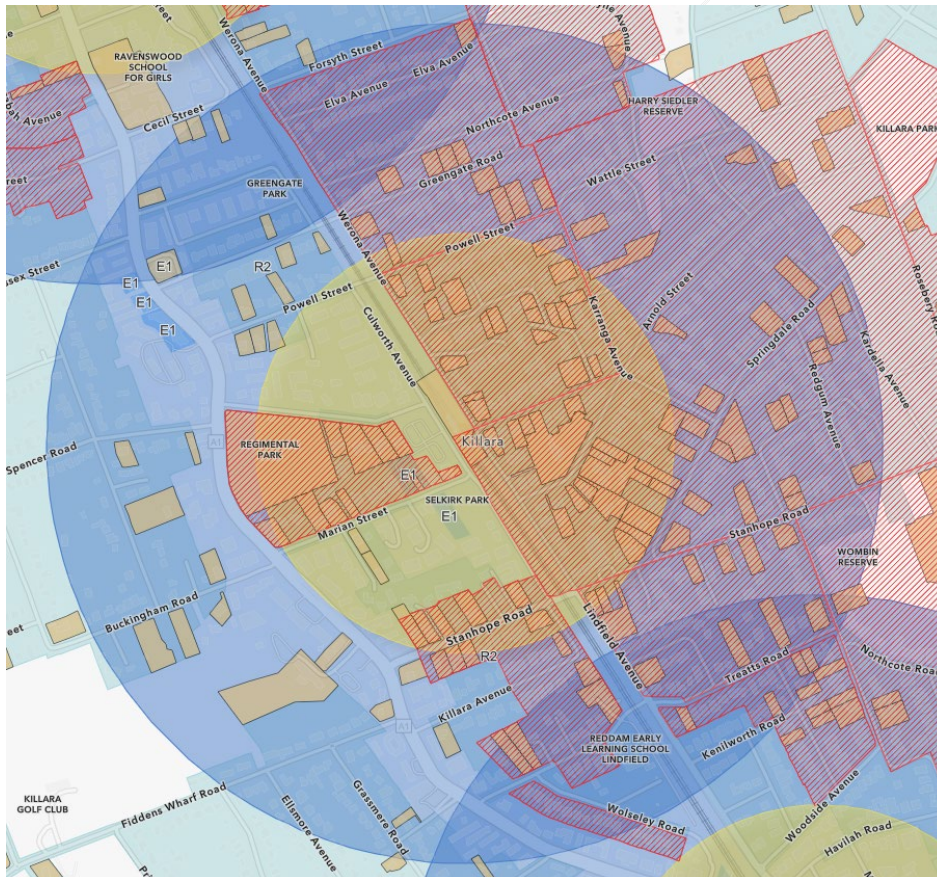
 - HER - Heritage Items

 - Item - General

- LEP - Land Zoning

 - R2 - Low Density Residential

Above: Gordon station



- Other centres - buffer 400 metres

- Other centres - buffer 800 metres

- Other centres - buffer 400 metres

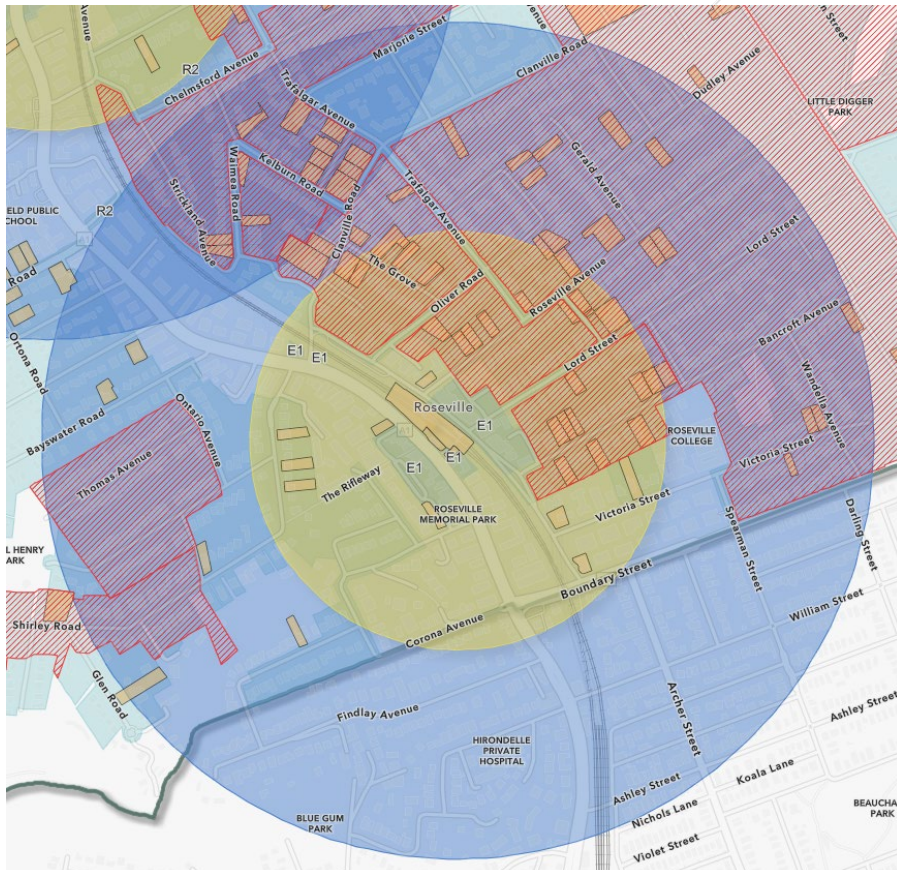
- Other centres - buffer 800 metres

Above: Killara station



- LEP - Heritage
- HCA - Heritage Conservation Areas
- HER - Heritage Items
- Item - General
- Other centres - buffer 400 metres
- Other centres - buffer 800 metres
- TOD - buffer 400 metres
- TOD - buffer 800 metres
- LEP - Land Zoning
- R2 - Low Density Residential

Above: Lindfield station



Above: Roseville station

3.7.4 Undermining orderly planning

Housing supply is not the only purpose of planning. Conserving heritage is also important to the community. Since contemporary town planning began with NSW laws in the 1970s, as a result of community unrest and 'green bans', the fundamental purpose of town planning has been to provide for orderly development and community certainty. This is achieved by strategic planning that considers and balances all community needs of development for the environment, society and economy.

3.7.5 Costly development

A Government decision that one community interest (housing) is more important than another (heritage) does not eliminate the community need to protect heritage. A Government decision to dismiss heritage does this remove legal and planning systems in place to manage heritage.

The proposed increase in housing density (FSR, heights, dwelling numbers and reduced minimum lot sizes) is far in excess of existing significant built form. This will embed a contradiction in the planning instruments between permissible housing density and heritage conservation. Rather than delivering more housing, this risks increased community conflict, NSW Land & Environment court cases, and associated delay and cost for housing supply.

3.7.6 Removing community certainty

Owners and residents in listed heritage areas and sites have a reasonable expectation that the heritage values will be maintained through new and adjoining development, as provided for in existing planning instrument controls for heritage items, conservation areas, development in the vicinity of heritage items and conservation areas, zoning and development standards.

The proposal includes no measures to maintain this certainty of appropriate conservation. It provides no evaluation of the impact of the increased density on the heritage significance of these areas and sites. This is inconsistent with the NSW government's local planning direction for heritage conservation and the heritage objectives of standard planning instruments across NSW.

3.7.7 No local consideration

Heritage impacts of this proposal are heightened in Ku-ring-gai, compared to inner city or less established residential areas, because of the distinctive consistency, location and low scale of its heritage areas and items as a result of its historic pattern of development. Ku-ring-gai's early development is concentrated along the railway line and primarily single storey houses in garden settings.



Above: St Johns Avenue, Gordon conservation area proposed for 6-7 storey apartments



Above: Trafalgar Avenue, Roseville conservation area proposed for 6-7 storey apartments



Above: Clanville conservation area, Roseville Avenue, proposed for 6-7 storey apartments

3.7.8 Inappropriate controls

The proposed 'one-size-fits all' development standards across Sydney do not recognise differences in local physical constraints of street patterns (such as no rear lanes for car access for terrace development) and land parcel size that will produce greater impacts in areas like Ku-ring-gai.

Distance from a station or local centre is a narrow and inadequate basis for increasing housing density in established areas with major impacts as a result, particularly in areas like Ku-ring-gai with a distinctive and protected heritage in these locations.

3.7.9 Blanket increased density is not appropriate for heritage

The proposal is for the same density for heritage listed and unlisted sites despite different site constraints and conservation requirements.

Increased density or adaptive reuse in a sensitive heritage conservation area or item requires a site specific design response and considered merit assessment. A merit development assessment for heritage needs to demonstrate that the proposal will retain the heritage significance of the affected item or area, in terms of fabric, setting and views. This has not been provided in the current NSW government proposal.

The proposed blanket increase in density eliminates capacity to properly evaluate and mitigate heritage impacts before this impact is irreversible.

Rather than a blanket increase as proposed, the existing site-specific planning proposal exercise is the appropriate mechanism for sensitive increases in density in heritage conservation areas and heritage items.

3.7.10 Irreversible heritage loss

The proposal will incentivise partial or complete demolition of heritage buildings, over-scaled infill development and loss of garden settings though the disparity between existing and permitted density and inability to refuse detracting development. Once existing building fabric is demolished or a setting is degraded with over-scaled infill development, this impact on heritage significance is irreversible.

Case law in the NSW Land and Environment Court has established that the appeal process will permit a heritage impact, such as demolition or degraded setting if the proposal is within the maximum density set by planning controls. This assumes that relevant environmental issues have been taken into account in forming these controls, which has not been demonstrated in the current proposal.

3.7.11 Absent heritage protection

The proposal contains no requirement to protect the fabric and garden setting of listed heritage conservation areas and heritage items. While sympathetic adaptive reuse of a listed building can be achieved, the proposed substantial increase in density without any conservation requirements makes no provision for this outcome. The removal of council's capacity to refuse unsympathetic development will instead invalidate current incentives and guidance for sympathetic adaptations and conservation in the environmental planning instrument and development control plan.

3.7.12 Detracting development

The proposal appears to assume that facadism or over-scaled infill development is appropriate conservation for listed heritage items and conservation areas. This will have an irreversible impact on the heritage significance of conservation areas through loss of both fabric and setting. This outcome does not satisfy the standard planning instruments objectives to conserve heritage significance of conservation areas, heritage items and adjoining sites (in the vicinity) specifically in relation to fabric, setting and views.

3.7.13 Devaluing conservation areas

The proposal implies that conservation areas have less value than heritage items and therefore do not warrant the same degree of conservation. However the planning protection and systems for both types of heritage listing are the same externally where they seek to retain the heritage significance for which the areas and items are listed.

Conservation areas have collective value as cohesive precincts, not less heritage value than a heritage item. Heritage item and conservation area listings together manage change to buildings, sites and cohesive areas as a whole because these embody their heritage significance as living local history and place-makers, not just facades or fragments.

Where conservation areas are significant for their cohesive history, form, subdivision pattern and low scale, as found in Ku-ring-gai, these areas arguably have less capacity than some heritage item sites to accommodate more density without unreasonable loss of significance.

3.7.14 Degrading the significance of conservation areas and heritage items

As an example of the heritage impact of the proposed 6-7 storey apartments at 21 metres height within Ku-ring-gai's listed heritage conservation areas and heritage items, the following illustrates the scale of a typical listed street at Locksley Street, Killara, as currently and proposed.



Above: existing street view of a typical heritage conservation area in Ku-ring-gai (Lockley Avenue, Killara)



Above: Reference example of built form resulting from proposed building height and lesser floor space ratio less than proposed (21 metre height, 2.75:1 floor space ratio).

Locksley Street forms part of two contiguous conservation areas in Killara for Lynwood Avenue and Springdale Heritage Conservation Area. These areas are identified as significant as evidence of Killara's early layout and subdivision, for its highly significant buildings, gardens, mature trees on private property and street planting. The area demonstrates a high degree of intact and cohesive early twentieth century development of mostly Federation and inter-war houses, many of which were architecturally designed. This street also includes individually listed heritage items of a consistent period and scale.

The proposed 6-7 storey or 21 metre building height (increased to 9 storeys with bonus, not shown), 3:1 floor space ratio and density of the proposed apartments would not retain these significant built and

natural features for which the areas are significant. Even if existing buildings are retained with new infill development, the proposed scale and density of these buildings would dominate and degrade the garden setting, integrity and consistency of these heritage conservation areas.

3.7.15 Heritage listing is pro-conservation and appropriate development

The underlying assumption that heritage listing is ‘anti-development’ is not supported by the process or measures for listing. Instead, listing and heritage conservation are based on impartial State Government measures of heritage significance from the NSW Heritage Council. These measures establish what is worth retaining for current and future generations and eliminate the bias of anti-development reaction or amenity concerns. Further, the listing of existing heritage items and conservation areas have been approved by State Government as meeting these impartial conservation standards.

In the planning system, heritage listing operates principally as a demolition control and trigger for development merit assessment. The purpose of both is to retain heritage significance. As such, heritage listing operates more as an anti-destruction or pro-conservation mechanism for those places worth keeping. This process can and does accommodate sensitive development that respects the qualities of the listed place and/or area.

The existing planning system has appropriate capacity to assess additional density and changes for their impact on heritage significance through either a planning proposal or development application.

3.7.16 New density done well in existing low density heritage areas

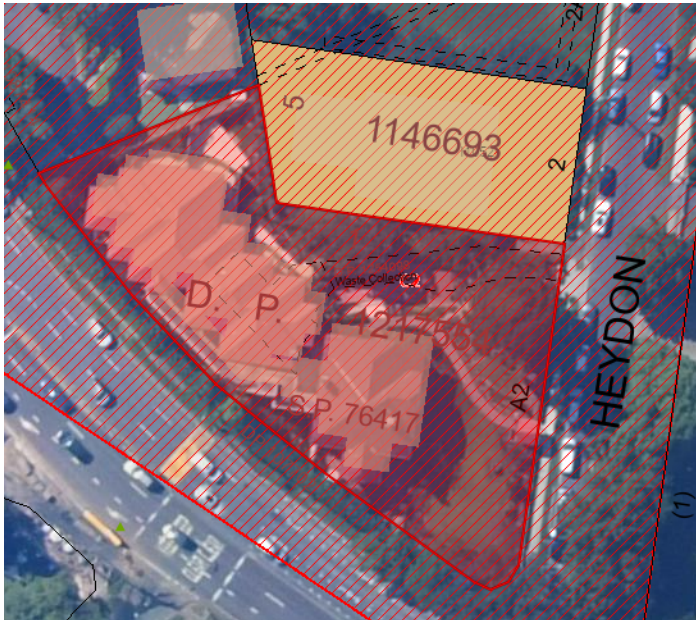
Ku-ring-gai Council and the existing planning provisions have permitted increased density in its heritage conservation areas where site constraints permit acceptable heritage and other environmental impacts, utilising existing conservation incentives.

An example is at 2B Heydon Avenue, Warrawee, pictured below, located in a heritage conservation area, adjacent to a heritage item. At this corner site zoned for low density residential (R2), with an FSR of 0.3:1 and 9.5 metre building height, additions to a single dwelling delivered 8 dwellings. This retains the historic building, front garden, scale and setting for the area and adjacent heritage item.

The proposed blanket increased density will compromise these good heritage and density outcomes. This outcome was only achieved with existing low development standards, conservation incentives for more where conserving heritage significance and capacity to refuse detracting development.

Existing low development standards facilitate viable development by not inflating land value costs from the outset. Council’s dual capacity to refuse detracting development and approve further sensitive development as conservation incentives ensures the consent authority can maintain the significance of the subject site and area. The lower starting development cost and negotiated density increase also incentivises an exchange of public good for the extra development, such as appropriate building and garden conservation.





The above is just one example. Other existing heritage sites will have different site constraints such as land area, levels and street access, existing building forms, gardens and adjoining context. Prescribing a single design response for all without capacity to refuse detracting development and incentivise better, will degrade heritage items and heritage conservation areas. Instead, lower existing standards and incentives for more density where this retains heritage significance is more likely to deliver further appropriate density in a heritage context as demonstrated above.

3.7.17 Heritage significance differs to character

The proposal is lacking consideration or protection for 'heritage significance' for which sites are listed under planning law, instruments and government policy. This differs to 'character' that can change. More than 'character', the protected heritage significance of heritage areas and items is core to local identity and links to history. Unlike 'character', 'heritage significance' is embodied in existing building form, features and setting that once lost, cannot be replaced.

3.7.18 Unjustified heritage loss for uncertain economic gain

The economic incentive to demolish for increased density will incentivise heritage loss, but does not guarantee improved housing affordability. The economic evidence that permitting increased housing will increase affordability has not been provided in order to justify the degree of heritage loss.

Economic drivers have more impact on supply and affordability than planning, such as taxation and negative gearing. While the planning system approves housing supply, it does not secure supply. Delivery is determined by developers, associated land value and market forces to maintain profitability, which do not benefit affordability. The proposed standards for higher density that conflict with other planning objectives and community needs may in fact slow and increase the cost of housing, as noted above.

3.7.19 Endangering unlisted heritage

The proposed increased development potential will impact on the capacity to heritage list and conserve further places of justified heritage significance. Not all significant sites are already heritage listed. Sites worthy of listing is a matter under regular review through heritage studies and the like because community understanding and values will change over time.

3.7.20 Alternatives are available

Conserving heritage and supplying housing are not mutually exclusive needs but can both be achieved through careful consideration and placement. There is no mandate to place the highest density in the most heritage-rich locations, as currently proposed. There is a community mandate, state government law and approved listings for protection of heritage conservation areas and heritage items.

Further investigation is required to find alternative locations with less heritage or environmental impacts.

3.8 Environmental impacts

3.8.1 Urban Heat

The perils of urban heat are evident, with average temperatures in large cities 1 °C to 3 °C higher than in rural areas, leading to various impacts on human health, economic productivity, the environment, and critical infrastructure. Australia, for instance, has experienced more deaths from major heatwaves since 1890 than from combined natural disasters like bushfires, cyclones, earthquakes, floods, and severe storms. The 'urban heat island' effect, exacerbated by sealed surfaces and a lack of green infrastructure, intensifies the heat in urban areas. Urban heat islands contribute to the severity of climate change effects, making higher temperatures and extreme weather events more challenging to manage.

Inappropriate development compounds the urban heat island effect as impervious surfaces replace natural vegetation, hindering heat absorption and dissipation. This phenomenon not only creates discomfort and health risks, especially for vulnerable populations, but also strains urban infrastructure. Mitigating urban heat from inappropriate development requires a comprehensive approach, including sustainable urban planning strategies, prioritisation and maintenance of tree canopies, and promoting green infrastructure like parks and tree-lined streets and ensuring deep soil capable of supporting mature trees is a requirement within private development.

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.

Community engagement and education are crucial for fostering sustainable development practices and preserving green spaces. Addressing the root causes of inappropriate development through nature-based solutions can lead to a more resilient and sustainable urban environment, ultimately minimizing the adverse impacts of urban heat. Again, the one-size-fits all approach proposed through the TOD SEPP overrides well thought out and appropriate local controls and considerations and risks exacerbating negative impacts on liveability and biodiversity.

3.8.2 Lack of ESD principles and inconsistency with State Acts

Ecologically Sustainable Development (ESD) is a goal that requires environmental protection to be taken into consideration effectively when making development decisions. Four recognised principles inform that process. First, the precautionary principle. Secondly, the principle of inter-generational equity, which incorporates the notion of intra-generational equity. Thirdly, the principle of conservation of biological diversity and ecological integrity. Finally, the principle of improved valuation, pricing and incentive mechanisms, which emphasises the internalisation of environmental costs.

The TOD SEPP does not adhere to the principles of ESD.

The TOD SEPP appears to place increased housing density above other considerations including canopy retention, biodiversity conservation, infrastructure and storm water capacity, heritage, liveability and sustainability. This is inconsistent with government policies and strategies. For example, the Environmental Planning and Assessment Act (1979) lists as an objective, “to encourage ESD”. It therefore follows that any planning instrument developed under the EP&A Act should be founded on the principles of ESD.

The TOD SEPP is inconsistent with state Acts, including:

- **Biodiversity Conservation Act 2016**
 - *Part 1, 1.3 (a) to conserve biodiversity at bioregional and State scales, and*
 - *(b) to maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations, and*
- **Water Management Act 2000**
 - *Chapter 1, 3(a) to apply the principles of ecologically sustainable development, and*
 - *(b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and*
- **Environmental Planning & Assessment Act 1979** act objectives: Noting that this SEPP has been developed in response to objectives 1.3(c) and(d), it is not clear how it aligns to the controls in this SEPP
 - *Part 1, 1.3(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*
 - *1.3(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment*
 - *1.3(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats*

3.8.3 Loss of biodiversity and tree canopy

Within the TOD zones are some high value, mature trees with significant canopy, many of which represent remnant stands of Blue Gum High Forest and Sydney Turpentine Ironbark Forest Critically Endangered Ecological Communities. The SEPP Should be implemented in a way which allows for retention of significant mature trees. Currently, these trees significantly contribute to the skyline and character of TOD areas. These trees are important as habitat stepping stones for many animals which use the urban areas, feeding resources for nomadic blossom feeders like parrots and Grey-headed Flying-Fox, numerous invertebrates and other species. Removing these trees from the urban areas will reduce habitat and prevent many species from moving across the landscape.

As the TOD zones identified are along the ridgetops, these trees provide the connectivity between more vegetated zones on the east and west. Losing these trees could impact the mobility of species and geneflow, significantly adding to issues of fragmentation and isolation of populations of plants and animals.

Very old/ Mature large trees are not able to be replaced within a human lifespan and as such, retention should be prioritised over replanting. If development fails to protect these trees they will be gone for good, and the animals, plants and community will be worse off.



Figure 1 Swamp wallaby seen in urban area of Ku-ring-gai



Figure 2 Powerful Owls are listed as Vulnerable in NSW and utilise the large old trees throughout the Local Government Area

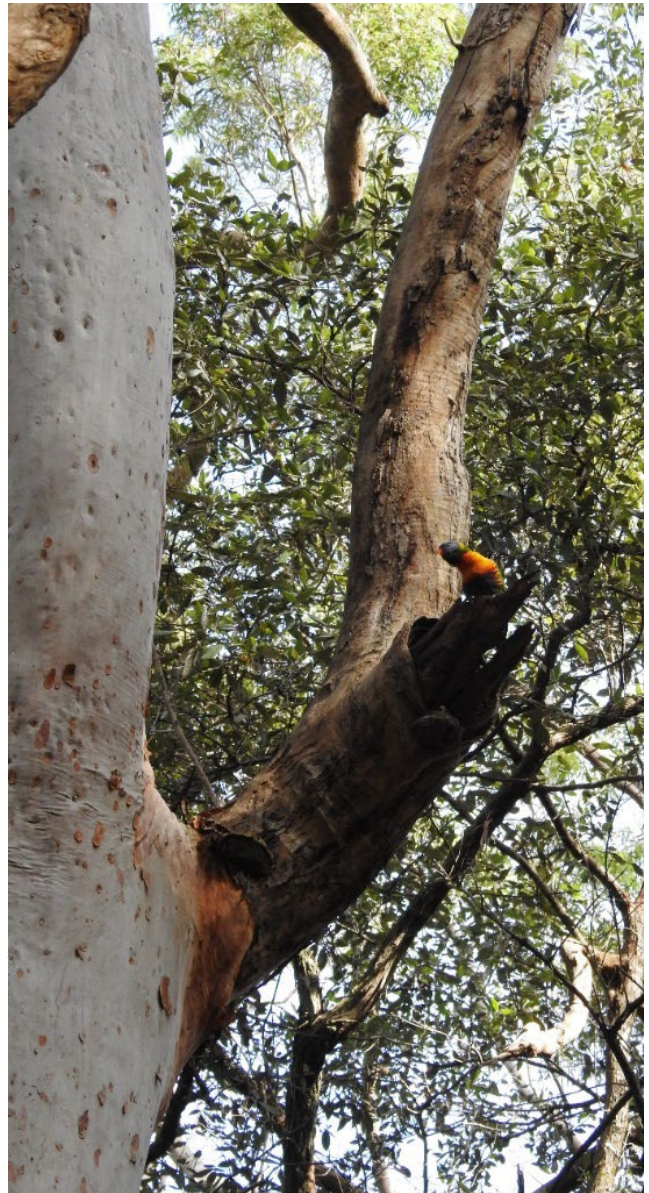


Figure 3 Rainbow Lorikeets and other birds use hollow in old growth trees within the Urban areas.

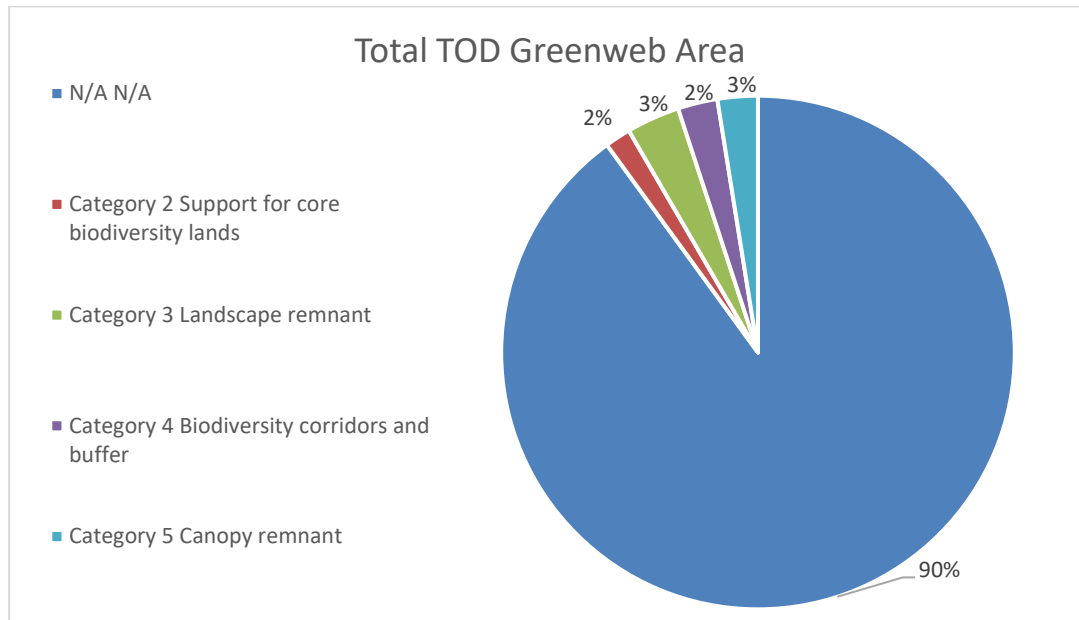
Merit based assessment and non-refusal

The Transport Oriented Development Program states on page 10, that a merit based assessment and relevant environmental controls will continue to apply “To the extent they are not inconsistent with the new standards”. Additionally within the departments briefing notes it states “Existing planning controls greater than those in SEPP will continue to apply”

These statements could be interpreted to indicate that environmental or local controls which are inconsistent with the increased density are not to form part of a merits based assessment or form the basis of a refusal. The SEPP should clearly articulate that implementation is not to override other local constraints/protections.

The SEPP should articulate the no-net-loss of biodiversity as an objective. This will not prevent increased density but will require high quality design which considers site constraints and local environmental values.

Across the TOD zones in Ku-ring-gai, only 10% of the land area covered by the TOD SEPP is identified on Council’s Greenweb map, which helps to protect Endangered Ecological Community remnants, riparian land, corridors and significant vegetation. As such, excluding this higher biodiversity land will only have minimal impact upon the implementation of the SEPP but will provide recognition and protection for the high biodiversity values within the areas covered.

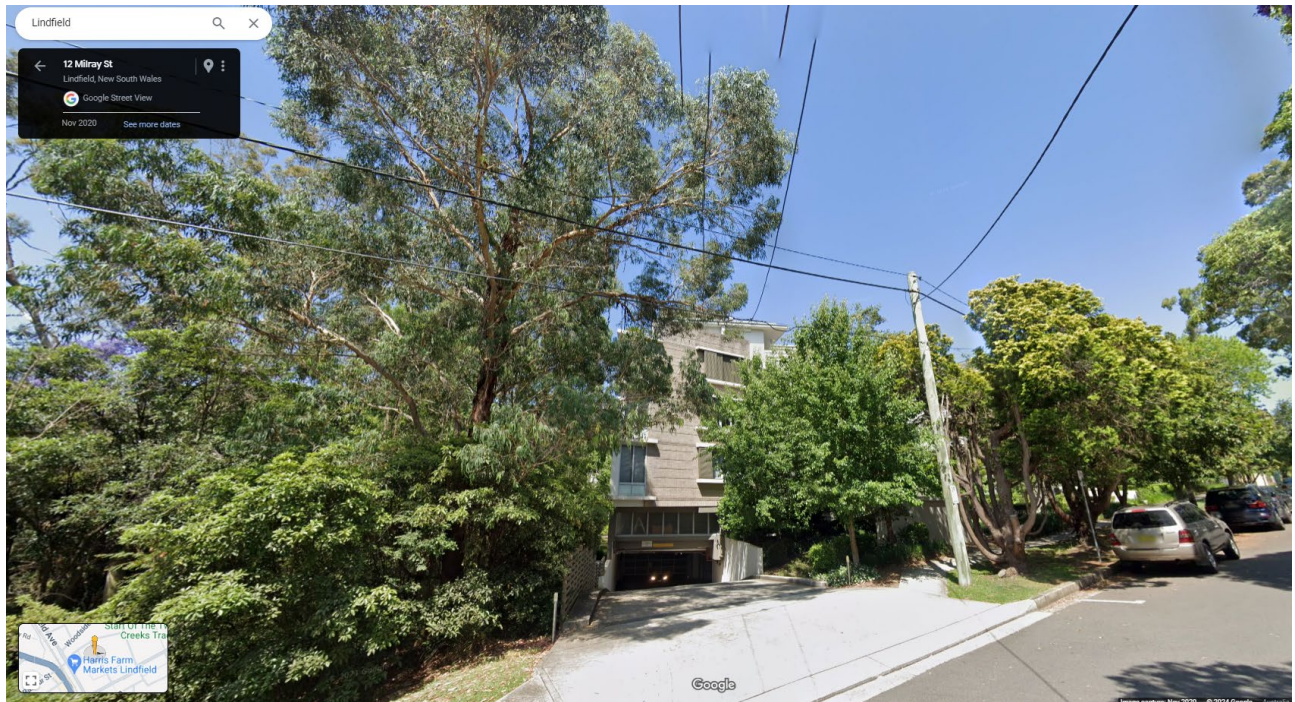


Reliance of the proposed TOD SEPP on the *updated* Apartment Design Guide as the principle guiding document for the “further 31 precincts” is unlikely to meet the desired “good design” and “excellent amenity and liveability” outcomes for residents and local neighbourhoods, based on the currently proposed 3:1 FSR.

For example, the minimum deep soil area in the Apartment Design Guide (ADG) is 7% of the site area, in comparison to Ku-ring-gai’s minimum of 40% for sites up to 1500m² (50% for sites greater than 1500m²). Ku-ring-gai’s deep soil and planting requirements have been shown to get excellent outcomes on RB sites, allowing the retention of existing vegetation, waterways and riparian land whilst providing for the establishment of tall canopy on sites that provide enhanced liveability and amenity to residents over time. Further limitations with application of the ADG in Ku-ring-gai are evident where smaller sites are only required to plant small trees – due to the fact that a smaller minimum deep soil area is provided. This is a clear example of why deep soil areas need to be increased to both allow for the meaningful retention of existing vegetation and allow for the potential increase in canopy in an area of increased density.

If these controls are to apply to the proposed TOD areas – 6-7 story developments will tower over the small trees in the limited deep soil areas, limiting their growth and ability to contribute to local amenity. Even in areas where large trees can be established, their growth will be restricted by the building height and canopy will not have the potential to extend above roof lines. The high FSR proposed for these sites will likely result in a canopy area roughly limited to the deep soil area. A canopy coverage of 7% - 10% across these TOD precincts, that currently sits between 29-39% canopy cover, is a huge reduction that will have devastating biodiversity, liveability and amenity impacts.

Ku-ring-gai’s current RFB developments, that address biodiversity, riparian and deep soil requirements provide a clear demonstration that density can be increased without having to override environment and biodiversity controls. These should be used across Sydney as an example of how development density within TOD areas can be increased whilst maintaining environmental values.



Milray St, Lindfield – Riparian Land and Canopy retained on left.

Without the master planning process that the 8 primary precincts receive, the application across the further precincts is likely to fail a number of key state and local environmental and biodiversity objectives, particularly if “non-refusal standards” do not allow for the protection of existing environmental and landscape assets. In particular, there will be issues in relation to areas of biodiversity significance, trees and vegetation.

References to non-refusal standards and statements such as *“Relevant environmental controls will apply to the extent they are not inconsistent with the new standards”* give the impression that the SEPP will completely ignore local planning provisions and objectives. These are well established communities where existing residents value their local amenity and environment and these communities should not be ignored and negatively impacted through this SEPP.

The TOD SEPP needs to recognise and make provisions for the hap-hazard development that will result in these areas. Local amenity and environmental controls should be retained and adhered to minimise negative impacts on the environment, liveability and amenity of local residents.

3.8.4 Impacts on Liveability

Council’s Urban Forest and Water Sensitive City policies both emphasise the importance of liveability and the benefits that natural biodiversity and environmental assets provide. These should be used as opportunities to enable provision of a high standard of liveability through the proposed development. Often where controls are ignored, developments do not reach liveability expectations, for example, damp and mould have been issues in ground floor apartments where riparian land setbacks are not adhered to.

3.8.5 Water management

No information on potential impacts to water management systems has been provided. Although it can be assumed that high level assessment of water supply and sewerage system capacity was included in feasibility investigation for the TOD areas, there is no information on required upgrades and how any such requirements will be rolled out with the SEPP. The sewerage system in Ku-ring-gai experiences frequent

overflows, particularly along the waterways in our natural areas and national parks during wet events, and such a significant increase in population will add further pressure to the system.

The 4 areas identified in the KRG LGA all have stormwater capacity limitations that cannot be addressed through the application of on-site detention measures (OSD) alone. Detailed Assessment of stormwater infrastructure condition and upgrade requirements need to be determined before wide-spread development is allowed. The ridge top development nature of the areas targeted means that the runoff will also impact downstream environments, particularly the waterways within the surrounding National Parks. Garigal and Lane Cove National Parks are both downstream of these areas and only best practice water quality and flow management will protect these receiving environments from the proposed development.

Council's Water Sensitive City Policy and Strategy outlines clear aims and objectives for water management including to Integrate water infrastructure within the urban landscape to enhance the liveability of Ku-ring-gai, including stormwater treatment, flood risk management, heat mitigation, ecological health, microclimate and landscape amenity. In order for these new development standards to meet these adopted expectations, it is essential that they incorporate best practice management and adhere to all of Council's planning controls for riparian land and water management.

Understanding the extent and scope of stormwater management upgrades required in response to the proposed growth will also significantly impact on the contributions plans and may conflict with other required infrastructure improvements.

3.8.6 RECOMENDATIONS

- Need to define within the proposed SEPP that local/site based controls and merit based assessment will still apply.
- Increase the deep soil provisions beyond the minimum outlined in the current apartment design guide – retention of Ku-ring-gai's current deep soil requirements will ensure consistency across the area and provide for amenity and biodiversity benefits.
- The FSR needs to be reduced – the currently indicated FSR of 3:1 is unlikely to allow for setbacks, communal open space and deep soil requirements to be achieved. This will have a significant impact on amenity and protection of biodiversity in the area, with multiple demands limiting the biodiversity and ecological benefits that will be provided by the small amount of deep soil areas retained on site.
- Exclude the greenweb areas from the SEPP.
- Tree retention should be prioritised over replanting.

3.9 Development Assessment implications

3.9.1 Inappropriateness of a “one size fits all” approach

The 31 train stations subject to Part 2 of the TOD SEPP are within different LGAs with different local characters and physical attributes. The TOD SEPP proposes a set of uniform blanket pre-eminent controls for all of these areas, with no apparent recognition of local character and no provision for local character to be preserved, apart from through “merits assessments” which will not include any local DCP or LEP control that derogates from the Government's mandated non refusal standards and most in Ku-ring-gai will derogate given the in most cases such local controls feature significantly lesser height and FSR outcomes compared to the non refusal standards proposed in the TOD SEPP.

3.9.2 Non refusal standards and conflicts with existing local controls

Should any local (LEP & DCP) controls preclude or constrain realisation of the 3:1 FSR and/or the 21m height non refusal standards proposed in Part 2 of the TOD SEPP, then they would be of no effect as they

would be inconsistent with these new standards. It is considered that most controls in our LEP and DCP that are designed to protect local character, amenity, HCAs and special environmental areas, will to some extent reduce or preclude realisation of the new height and FSR non refusal standards and will therefore not apply as they would be inconsistent with the new controls. This will mean that the scope of merits assessment will be greatly reduced.

A Practice Note with further guidance, definitions and examples should be provided, particularly to address the concept of 'not inconsistent with' as this term creates a substantial grey area that may introduce issues of interpretation and tension within the approvals process.

3.9.3 Accelerated approval pathway

Reference is made in the Department's explanatory brochure on the Transport Oriented Development Program to an "accelerated approval pathway" as opposed to the regular approval pathway for developers that adopt the Government's endorsed pattern book designs. Clarification is sought on what precisely is meant by an accelerated approval pathway and what would be expected of local councils in terms of this pathway.

3.9.4 Impacts on development assessment resources and capacities

The TOD SEPP and future changes to create low additional low-rise housing will generate a significant and on-going increase in development applications. At this point, there is no indication from the State Government that any assistance will be provided to councils that have for some time been impacted by an acute shortage of development assessment resources. Additional development assessment resources will be a critical component in the implementation of the Government's housing targets.

3.10 Affordable housing

3.10.1 Provision by way of inclusionary zoning

The Ku-ring-gai LGA includes four of the thirty-one Part 2 railway station precincts. There is a different approach to Affordable Housing in these 31 Part 2 precincts compared to the eight Part 1 priority precincts. The difference is not just in the percentage, but in the tenure.

Ku-ring-gai Council supports the provision of Affordable Housing in perpetuity – and this is explicitly stated for the Part 1 precincts. It is not explicitly stated in the Part 2 Two locations. This apparent oversight should be addressed and made explicit. It is inferred that they are intended to be in perpetuity since one of the stated criteria for the Council's strategic planning processes intended to ultimately supersede the TOD SEPP is "long-term affordable housing in perpetuity".

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).

With an Affordable Housing provision at just 2%, it must be pointed out that it will be logistically difficult to deliver affordable housing in-kind at that percentage. It is also unclear precisely how the 2% is to be calculated – is it 2% of the gross floor area which is how affordable housing provision is measured under the December amendments to the Housing SEPP that permit floorspace bonuses for the provision of time-limited provision. Or is it 2% of the CIV of proposed development in the form of a flat rate levy?

In the case of the floorspace example (converted to units for ease of analysis), a proposed development would need to be a minimum of 50 units in scale in order to be able to dedicate one complete unit of average floorspace for affordable housing. Provision of affordable housing units of at least average floorspace must also ensure the dedication of units of a variety of floorspace layouts to include provision for families.

Given the scale of development required to support in-kind provision as just 2%, provision must also be made for the alternative of a monetary contribution to be held in trust for the provision of affordable housing by a Community Housing Provider that is active in developing direct supply. However, this should be as a fallback to the provision of complete units as direct dedication will have a more timely impact on the need for social and affordable housing as well as retaining a direct link to the geographic area in which the contribution was made with all the benefits of public transport access. To incentivise provision in kind, it is essential that any alternative monetary contribution is reflective of actual land and property values (per square metre of gross floor area) in the immediate geographic area of the construction as mapped by the TOD SEPP proposal.

3.10.2 Inter-relationship of Multiple Affordable Housing Provision Mechanisms

It is unclear whether the Affordable Housing provisions in the TOD SEPP are intended to override and negate the 30% floorspace bonus for time-limited provision of Affordable Housing for just 15 years. To have both systems operating in the same space will add considerably to confusion as to the permissible development controls, the quantum of contributions and the system of management of in-kind dedications. Certainty is essential for the development industry, the local community, Community Housing Providers and Government alike.

3.10.3 Management of Affordable Housing

Ku-ring-gai Council has not shortlisted or appointed a preferred provider for affordable housing so it will be necessary to mandate that the developer undertakes the legal processes to hand over these dwellings to a registered provider (in perpetuity). Any facilitation that could be provided by the Department would be most appreciated.

Recent research into the best tenure for Affordable Housing providers supports ownership as well as management by Community Housing Providers. Benefits of this model include:

- Cost-effective maintenance processes;
- Capacity to build community among tenants;
- Capacity to recycle housing nearing the end of its economic life with minimal disruption to existing tenants;
- Capacity to manage existing tenants transitioning from low income to social housing (due to age or advancing disability);
- Scope to negotiate for a better deal from utility providers (and capacity to opt-out of developer-mandated providers) to reduce management costs.

This list is not intended to be exhaustive and should be cross-referenced with submissions by Community and Affordable Housing Providers.

3.10.4 Summary of Key Points for Affordable Housing Provision in the TOD SEPP areas

- Mandated provision in Stage 2 areas must be in perpetuity.
- Consider whether 2% makes adequate provision for in-kind provision.

- Consider whether 2% is reflective of the appropriate value-capture of the immediate uplift in development potential.
- To incentivise in-kind provision, any alternative monetary contribution must be reflective of the actual land and property values in the catchment map pertaining to the specific station area in the TOD SEPP.
- DPHI will need to manage Affordable Housing Trust Accounts for Councils that do not yet have an Affordable Housing Strategic Plan and Contributions Plan in place.
- Developers will need to enter into agreements for handover of completed units to registered Community Housing Providers where LGAs have not yet determined a preferred provider.
- Preference of Registered Community Housing Providers for monetary contributions vs geographically scattered assets should be taken into account.
- Note that additional medium to high density housing delivered in the Ku-ring-gai Local Government Area will not become affordable simply by reason of its existence. Land costs for established houses that will be targeted for redevelopment range from approximately \$3,000 to \$4,000/sqm (rounded). 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.

3.11 Infrastructure provision

3.11.1 Infrastructure - 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.

3.11.2 Infrastructure - Traffic and Transport

3.11.2.1 Transport Infrastructure Assessment'

Notwithstanding access to heavy rail stations, intensive multi-unit redevelopment also generates additional demand for pedestrian, cycle and private vehicle infrastructure.

When Council undertakes housing strategies, there is a requirement to assess the transport impacts of proposed residential dwellings (as well as associated increases in retail, business uses and community facilities) in order to plan for any new transport infrastructure or upgrades that may be required. This includes extensive road network simulation modelling undertaken in collaboration with Transport for NSW and other transport stakeholders.

Part 2 of the TOD program offers no transport impact assessment from proposed significant increases in residential dwellings, and unlike the 8 Stage 1 stations the state government will not be providing funding or resources to Councils for the required traffic impact assessments or other technical studies. Council does not have the resources or budget to undertake any suitable analysis.

Additionally, Local Infrastructure Contributions under s7.11 require extensive supporting documentation in the form of transport studies based on development potential and likely take-up rates. The TOD SEPP is slated to come into effect in April 2024 without any time or resources to commission any such studies let alone develop and cost an evidence-based works programme and a funding strategy inclusive of an IPART-reviewed Contributions Plan. Fundamental pieces of the jigsaw are absent with councils being denied access to any of the analysis or reasoning that led to the identification of these areas and the associated impact assessment, if, indeed, any fine-grain impact analysis has been done.

Preliminary assessments by Council suggest traffic generation impacts from the potential additional residential dwellings (excluding impacts from any additional retail/business/community floor space that would be commensurate with population growth) would be substantial. For example, the PM peak traffic impacts could be equivalent to approximately 2 new full-line supermarkets in each centre, but there is no transport planning or network modelling to assess the impacts. These effects are likely to be exacerbated in the Gordon, Lindfield and Roseville centres, due to the close proximity of Pacific Highway and the North Shore Railway line presenting a constraint to access with limited crossing opportunities of the railway line and the Highway.

Examples of recent housing and integrated transport planning around TOD stations in Ku-ring-gai include:

- A development scenario in the Gordon town centre was assessed independently for Council that comprised approximately 2,500 new dwellings and modest increases in retail GFA. The road network simulation modelling revealed that key parts of the road network became congested even with planned road network upgrades in the Ku-ring-gai 7.11 Contributions Plan.

TOD dwellings in Gordon likely to be much greater than 2,500 (excluding additional retail/business/community uses to support it) which will cause further congestion and will likely require further road network improvements, and there may not be capacity for further road network improvements over and above those foreshadowed in the Ku-ring-gai s7.11 Contributions Plan. Furthermore, the Low and Mid-Rise SEPP would result in a large number of new dwellings in the broader Gordon area with poor access to transport, shops and services, resulting in cumulative traffic impacts to the Gordon town centre that have not been quantified.

- A detailed Transport Impact Assessment (TIA) was conducted in 2020 for the Lindfield town centre, as part of the Lindfield Village Hub Planning Proposal. The assessed the effects of the proposed Lindfield Village Hub (158 dwellings, retail, community facilities and commuter car park) and 2% annual background growth (representing residual LEP development and other background growth). The study found that upgrades were necessary at key intersections along Pacific Highway and on local roads (in addition to those already identified in the Ku-ring-gai Contributions Plan) to reduce the deterioration of road network performance to an acceptable level.

As with Gordon, the number of TOD dwellings in Lindfield are likely to be much greater than those assessed in the Lindfield Village Hub Planning Proposal (excluding additional retail/business/community uses to support it), which would have impacts that would need to be assessed. Due to the constraints

of the Highway and the North Shore railway line so close together in Lindfield, there may not be capacity for further road network improvements over and above those foreshadowed in the Ku-ring-gai s7.11 Contributions Plan and those approved part of the Lindfield Village Hub Planning Proposal. In addition, the Low and Mid-Rise SEPP would result in a large number of new dwellings in the broader Lindfield area with poor access to transport, shops and services resulting in cumulative traffic impacts to the Lindfield centre that have not been quantified.

3.11.2.2 Maximum parking rates

The Ku-ring-gai DCP specifies a minimum and maximum rate of car parking provision in high density residential developments and mixed-use developments within 400m from railway stations. The lower end of the range in the Ku-ring-gai DCP somewhat aligns with the rates of car parking provision in the RTA Guide to Traffic Generating Developments for high density residential land uses in metropolitan sub-regional centres. In the Ku-ring-gai DCP, any spaces provided which exceed maximum rate are included as gross floor area, so as to discourage excessive car parking provision.

Therefore, maximum 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.

3.11.3 Infrastructure – Stormwater and sewage

There is a total length of 294 km of stormwater drainage pipes within the LGA within the road reserves, council land, and private land via council drainage easements. The stormwater network is on average approximately 60-70 years old. In addition to the council controlled network there are additional private drainage systems through inter-allotment drainage easements, where responsibility of these assets lie with the private owner/s.

Approximately 69% of the network rated as "poor" to "satisfactory" condition, or approximately 87% of the network rated as "failed" to "satisfactory" condition.

The network in its current state is significantly under capacity when compared to current design standards, resulting in a number of flooding locations across the LGA reported by resident complaints and identified through the results of catchment studies undertaken over the last few years. Council's existing drainage system was designed to accommodate a 1 in 5 year rain event, whereas the current design standard recommended by the NSW State Government is the more intense rain fall event of 1 in 20 years.

Ku-ring-gai is still in the process of completing flood studies and identifying areas of overland flow. Flood mapping data is not yet available for all parts of the TOD areas (noting flood studies are currently being undertaken for the Lane Cove Catchments south of the Pacific Highway).

With regards to sewer, Council records that indicate the system was installed by MWSDB (now Sydney Water) circa 1930's. Records also show Sydney Water have self-reported 50 sewer leaks since Jan 1 2023.

Stations for Part 2 of the TOD program have supposedly been selected on the basis of 'enabling infrastructure capacity close to transport station', including an assessment of 'water and wastewater capacity'. However, no information has been provided on the impacts that the potential development under the SEPP will have on wastewater system capacity.

3.11.4 Infrastructure – Open Space

The provision of adequate new Local Open Space is a key focus of Ku-ring-gai's strategic planning practice. The award winning Ku-ring-gai Open Space Acquisition Strategy 2006 is regularly benchmarked to guide priorities for new open space in areas of rapid redevelopment.

Ku-ring-gai is characterised by natural areas and is bounded by National Parks and Crown Reserves. However, in the oldest established areas around the railway stations where the most densification has occurred and where even more is proposed, historical development patterns around the local stations on the northern line (late Victorian/early Federation) resulted in many of these areas being poorly provided for in terms of local open space within walking distance. Extensive analysis over the past 15 years documents this deficiency and the subsequent efforts of Ku-ring-gai Council to address this deficiency the rapidly developing areas around the local stations funded by s7.11 contributions, with seven new local open spaces, including a Village Green and six parks (Lindfield Village Green; Greengate Park, Killara; Cameron Park Turramurra; Boyds Orchard Park, Turramurra; Lapwing Reserve, St Ives; Curtilage Park, Warrawee and Balcombe Park, Wahroonga).

The current s7.11 contributions plan levies pro rata per capita to deliver new local open space at the significantly discounted rate of 2.75sqm/capita for local parks – less than a tenth of the generally accepted standard of provision of 28.3sqm/capita for open space provision (including sportsfields). The high cost of land in this area means that neither a s7.12 contribution rate nor a capped s7.11 rate could be capable of delivering anywhere near this already heavily discounted rate – just for local parks. There is no capacity for Ku-ring-gai to increase the number of sportsfields and can only focus on site-specific works that increase possible usage. In context it is important to remember that over 90% of the notional greenspace in Ku-ring-gai comprises natural areas rather than structured or active recreation areas.

The TOD SEPP is expected to facilitate a significant increase in new residents in the areas around the four affected stations of Gordon, Killara, Lindfield and Roseville with concomitant demands for additional open space and the upgrade of any existing spaces for much more intensive use. Inadequate time and resources has been provided for this analysis and for the preparation of a revised contributions plan.

3.11.5 Infrastructure Supporting Recreation

Council has recently completed the Recreation Needs Study for the Ku-ring-gai LGA. The purpose of this Needs Study is to inform Council's future Open Space and Recreation Needs Strategy. The Open Space and Recreation Needs Strategy will provide a roadmap for how Council will deliver open spaces and recreation facilities that meet the needs of the current and future Ku-ring-gai resident, worker and visitor populations.

This Needs Study will provide the evidence base to inform the development of Council's policy and strategy in relation to the open space and recreation needs of the Ku-ring-gai LGA, now and into the future. This Needs Study uses population projections for 2041 to demonstrate anticipated changes in demand over time for these spaces and facilities.

The COVID-19 pandemic has significantly intensified the use of open space for recreation and relaxation across the world, including in the Ku-ring-gai LGA. A recent survey by the NSW Department of Planning and Environment shows a dramatic increase in activities in public spaces and local neighbourhoods, with 71 percent of respondents appreciating local parks more. This has highlighted the importance of having to access to open space in proximity to all residents within their local area.

At the time of the 2021 census, the Ku-ring-gai LGA population was 124,075 (Usual Resident Population). Ku-ring-gai LGA's population grew by +5.1%, or +6,023 persons from 2016 to 2021, the implication with the introduction of the TOD it's an approximate 30% in residential population close to transport hubs.

The NSW Government states that open spaces are important public spaces where people can relax, exercise, play, and enjoy the natural environment:

- Walkable, accessible, well-designed open spaces are integral to the character and life of local towns and cities. They promote healthier lifestyles and provide relief from our built environment.
- Green open spaces help to mitigate climate change impacts, provide habitat for wildlife, and improve environmental conditions such as air and water quality.

Ku-ring-gai currently has a total provision of 3,170 hectares of public open and green space. However, 91% (2,895 hectares) of the total network is natural areas, with only 6% (90 hectares) classified as sports spaces (or 1.5 hectares per 1,000 people above Council's 1 hectare per 1,000 person benchmark), and only 2.4% (76 hectares) is classified as parks (or 0.6 hectares per 1,000 people lower than Council's benchmark of 1 hectare per 1,000 people). Many parks are also small (1 in 4 are under 0.5 hectares), limiting their uses and capacity.

There is a below-benchmark provision of local and few district parks within Ku-ring-gai's open space network, but they are the most-loved open spaces by the community, with 43% of survey respondents wanting to see more investment in them. Parks also provide the spaces for participation in high demand, informal recreation activities.

Priority locations for new parks are along the train line where provision and access is lowest and there is the highest population growth and density.

Growth under the TOD SEPP will significantly impact the provision of open space and increase the demands on the limited open spaces within close proximity of high density living.

There is a need to provide more parks closer to high-density developments.

67% of the Ku-ring-gai LGA community live in single dwellings, but an increasing proportion of the community are also living in apartments, growing from 19% in 2016 to 25% in 2021. Supporting higher-density communities means providing open space that meets a range of recreation needs; is within easy walking distance of home; and also functions as a "backyard" for residents living in apartments that have little private open space.

The introduction of the TOD will have significant impact on the capacity of Council to provide suitable open space for recreation purposes, where a potential of up to 30% increase in population will impact Council's capacity to provide open space.

Ku-ring-gai Council has developed an award-winning Open Space Acquisition Program to provide additional public open space for community use. Since 2010, Council has been actively acquiring land in the LGA, to convert this land into new parks and civic/urban spaces for community use.

Council has set a goal to acquire and deliver 50,000m² of additional public open space within the LGA. To date, Council has already acquired over 25,000m² of public open space.

Given the increasing costs of purchasing land and the limited availability of large parcels of land in urbanised areas, it can often be difficult for councils to secure enough land to provide new public open space and recreation facilities.

The introduction of the TOD has now significantly impacted the purchasing capacity of Council to provide suitable open space within high density areas thus impacting Council capacity to create liveable town centres.

3.11.6 Infrastructure – Community Facilities and Social Infrastructure

3.11.6.1 Community Facilities

Ku-ring-gai Council completed a Community Facilities Strategy in 2018. The study audit found council currently has about 9,000sqm of library and community floorspace. It assumes growth of 30,000 people to 154,000 in 2036 (based on NSW Department of Planning 2016 NSW population projections), resulting in a projected demand for about 19,000sqm of community centre and library space in 2036. This represents a shortfall of about 10,000sqm by 2036. Council is planning to deliver these facilities through the various hub projects.

Based on the dwelling figures used in the Government's TOD SEPP Program document, this would add an estimated 37,000 people not previously accounted for increasing, the undersupply by a further 4,500sqm to a total of 14,500sqm.

Funding for community facilities is limited under development contributions (S7.11). 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

3.11.6.2 Other 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.

As an example, school location and capacity are crucial factors in planning for housing growth. Uncoordinated development will strain existing schools and supporting infrastructure. The NSW Productivity Commission (2) estimates that adding 2,500 new households would add an immediate demand for over 733 additional primary school students and 325 secondary school students. 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.

These increases would also impact on traffic congestion and safety around local schools, increase demand for bus and train services, access to parks and recreational facilities, libraries and other services for students and young people. 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.

3.11.7 Impacts on community and emotional wellbeing

The impact of increased housing density on the social and emotional wellbeing of residents is complex and nuanced.

The research shows that well-designed high and medium density environments can support vibrant and active lifestyles. Walkable neighbourhoods with mixed-use development encourage physical activity, reduce reliance on cars and promote healthier lifestyles. Quality shared spaces and community hubs can cultivate community connections, belonging and social interaction. However, poorly planned development can breed social isolation and disconnected communities. Apartment blocks with limited access to natural light and green spaces may contribute to poorer mental health outcomes. Traffic noise and crowding may contribute to stress and anxiety. Concerns about safety and limited play areas may hinder childhood development. Older and more vulnerable may be more susceptible to the negative aspects of higher-density living, requiring additional supports.

The success of these environments requires responsible planning and development that puts the needs of residents at the centre, ensuring access to adequate green spaces, fostering a sense of community through well-designed places and spaces, and prioritising noise reduction through design considerations and traffic management strategies.

3.12 Development Contributions

3.12.1 Current Status of Local Infrastructure Contributions Plans

Ku-ring-gai Council has both a s7.11 Contributions Plan and a s7.12 Contributions Plan. Both apply to the entire LGA so that they operate in the same geographic space. However, each applies to different types of development in such a way as to ensure the plans are mutually exclusive. Importantly, all development proposals that result in a nett increase in dwellings are subject to the s7.11 Contributions Plan and explicitly excluded from the s7.12 Contributions Plan. An overriding direction to the contrary would result in significant confusion in the affected precincts.

3.12.2 The s7.12 Contributions Plan

The s7.12 Contributions Plan was reviewed in 2023, replacing the former s94A Contributions Plan that had been in effect since 2016. The indirect “fixed percentage levy” contributions system has been specifically drafted to cater for comparatively small-scale redevelopment in the form of single dwelling alterations and additions and knockdown rebuilds. It provides an income stream that funds infrastructure that is also local and small scale in nature such as intersection treatments, local cycleway access and additional facilities in local parks to cater for increased and changing demand.

3.12.3 The s7.11 Contributions Plan

The s7.11 Contributions Plan is currently under review however, in the absence of any published dwelling targets to date on which comprehensive studies such as traffic studies could be based, the review is at a preliminary stage.

This Contributions Plan is especially complex because Ku-ring-gai has an exemption from the \$20,000 threshold in the existing Local Centres catchments – areas which were upzoned from 2010 & 2012 – which also include many of the areas within 400m of Gordon, Killara, Lindfield and Roseville Stations (but only those areas which were upzoned at that time). These areas are partially, but not entirely, redeveloped as they were based on prospective growth until 2031.

The \$20,000 threshold – or “cap” – was first established in 2009 and has not ever been inflated over its nearly fifteen years of operation. Land acquisition costs have increased significantly since that date so the exempted contributions now exceed the \$20,000 threshold by a much more significant amount than when they were first adopted. Had the NSW Government also inflated the cap by both a land value index (land) and a Producer Price Index (works), it would likely be between \$30,000 and \$40,000 in 2024, fifteen years after it was first published.

The low density areas around these stations that are zoned R2 are outside these identified catchments. This means that they are subject to the \$20,000 cap and, as a result, multi-unit housing in these areas will be contributing comparatively less towards the cost of providing essential supporting local infrastructure than the areas that are already zoned for higher density redevelopment that is currently underway. This is inequitable and undermines the adequate provision of supporting infrastructure.

However, mandating a blanket contribution rate in these precincts that was less than the current contributions rates, including within the existing Local Centres catchments, would result in a significant discount of contributions from sites that have already been identified and included in the current s7.11

contributions plan, impacting and destabilising cashflow for works long-since committed to and in an advanced state of planning and delivery.

As such, the review of the current s7.11 Contributions Plan will either need to retain the benefit of the exemption from the cap or be an IPART-approved contributions plan. Ku-ring-gai Council is preparing the groundwork for the current review to be an IPART plan in the expectation that the threshold and any associated exemptions, will ultimately be phased out. However, it must be appreciated that this is not a quick process, and it is extremely important that the current contribution rates be “grandfathered” in the identified precincts until a revised Contributions Plan can be brought into effect.

3.12.4 Key Points concerning Local Infrastructure Provision in Ku-ring-gai

- Both s7.11 and s7.12 Contributions Plans are in effect in the Ku-ring-gai LGA.
- The s7.11 Contributions Plan is the plan that applies to all development that involves a nett increase in the number of dwellings on the site (excepting secondary dwellings which cannot have separate title).
- Areas already zoned for higher density redevelopment are in Local Centres catchments that have an exemption from the \$20,000 cap.
- The \$20,000 cap applies outside the current Local Centres catchments.
- The TOD SEPP will have the effect of extending the catchment areas that are subject to higher residential development potential.
- The cap exemption is critical for infrastructure delivery in Ku-ring-gai because of the high cost of land acquisition that could not be accommodated within the cap or via a s7.12 Contributions Plan.
- Despite this exemption, the s7.11 Contributions Plan can still only provide for new local parks at the rate of 2.75sqm/person which is less than 1/10th of the accepted standard of provision of 28.3sqm/person and approximately half of the then prevailing rate of provision at the time of the last major rezonings.
- Ku-ring-gai Council actively delivers new local parks explicitly designed for highly intensive use of relatively small spaces, having delivered seven so far over the life of the plan.
- The inability to acquire more land for new local open space provision is also addressed by the provision of public domain works within the existing road reserves to enhance pedestrian use by way of wider footways and the opportunity for parklets and outdoor dining.
- The current s7.11 contributions also provide for traffic and transport related works including several new link roads and intersection upgrades.

3.13 Alternate Council led strategies

For Part 2 Precincts, the proposed TOD SEPP is intended to commence in April 2024. The amended planning controls will then in place until councils have completed and delivered a new strategic vision and rezoning for these areas... with uplift equal to or exceeding SEPP controls’.

The TOD SEPP appears to place increased housing density above other considerations including canopy retention, biodiversity conservation, infrastructure and storm water capacity, heritage, liveability and sustainability. Blanket controls such as those proposed are not suitable for places with multiple real environmental constraints. Ku-ring-gai would benefit from being able to shape the controls in an

alternative and specific way (for instance, higher at the stations taking advantage of unconstrained and flatter land, and lower at the perimeter acknowledging multiple constraints and transition to surrounds). However, there is no suggestion that an alternative could deliver an outcome of lower yield than that notionally calculated for each individual TOD Station with yield reallocated to other TOD and non-TOD locations.

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.

Given the potential significant dwelling increase in each of the 4 TOD precincts in Ku-ring-gai, the required master planning process 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.

Also, 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 I to put forward an alternative proposal after due consideration of local constraints, needs and community input.