

818 Pacific Highway, Gordon NSW 2072
Locked Bag 1006 Gordon NSW 2072
T 02 9424 0000 F 02 9424 0001
DX 8703 Gordon TTY 133 677
E krg@krg.nsw.gov.au
W www.krg.nsw.gov.au
ABN 86 408 856 411



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The Hon Paul Scully MP
Minister for Planning and Public Spaces
GPO Box 5341
Sydney NSW 2001
Via email: office@Scully.minister.nsw.gov.au

Dear Minister ~~Scully~~ *Paul*,

I thank you for your letter dated yesterday (11 April 2024) regarding the Transport Oriented Development State Environmental Planning Policy (TOD SEPP) as it applies to Gordon Station, Killara Station, Lindfield Station and Roseville Station.

I appreciated our meeting on 29 February 2024 where you made an offer to Council on the flexibility of a deferred commencement date of the TOD SEPP. And as you recall, there were three key criteria to the possible deferred commencement.

1. You said that any deferred commencement would be 6 months maximum.
2. You said that while you would allow deferred commencement of some TOD locations, at least one of the four must commence April 2024.
3. You said that based on your internal modelling, all four must become TOD locations and there was no flexibility of removing one (such as Killara) from the list by shifting the density to another (such as Gordon).

We mentioned that it would be difficult for Council to conduct local planning without having housing targets to aspire to, and you mentioned that your staff would call us later in the week with the details.

We also mentioned that when conducting local planning, it would make more sense to consider a target for the entire Local Government Area (LGA) rather than the proposed 400m circles. But you were keen to keep the scope of the conversation to the TOD SEPP only.

On the next day 1 March 2024, your staff confirmed that:

1. Each of the four TOD locations is expected to support an additional 4,500 to 5,000 new dwellings under the TOD SEPP.
2. There was the possibility to slightly shift some density from one to another e.g. 4,000 in Killara and 6,000 in Gordon.
3. Deferred commencement was for 6 months only.

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Telephone: - 02 9424-0709

On 4 March 2024, the councillors and staff discussed your offer extensively. Their concerns included:

1. The inappropriateness of establishing a new Local Environment Plan (LEP) within a 6-month period, especially when Department Guidelines recommend 420 working days inclusive of careful assessment and community consultation. To rush the process in 6 months would be a breach of public confidence and expectation, and a more realistic process would require at least 12-18 months.
2. The lack of a target for the rest of the LGA under the Low- and Mid-Rise Housing SEPP (LMRH SEPP), which also would have required local planning to achieve sensible outcomes. Any sensible planner would address the entire LGA in one swoop rather than duplicate two disconnected local planning processes a few months apart (one for TOD SEPP, then a second for LMRH SEPP).
3. Uncertainty remained for Heritage Items, Heritage Conservation Areas, and the achievability of the State's goal of 40% urban tree canopy when given the height and FSRs.

I was looking forward to discussing the next steps with you later that week, however, was subsequently told that I was to be excluded from the meeting. At this meeting on 7 March 2024, our staff conveyed to your staff that the councillors had limited appetite for the rushed timeframe without proper planning or consultation. The preference was a 12-18 month deferred commencement with planning for an entire LGA, and this was not supported on your end.

I will now address the three themes covered by your letter from yesterday.

Heritage Conservation Areas

We have seen your message in printed media that the current heritage provisions under Council's Local Environmental Plan will continue to apply, however at this stage we have difficulty seeing how this will be possible.

The only certainty we have is that the two SEPPs will respect State-Listed heritage items such as Eryldene. However, any surrounding properties (which comprise the urban context to these items) might still be affected by those SEPPs.

Until Council sees the terms of the SEPPs, Council notes there is uncertainty as to their effects on the application of those SEPPs upon Local-Listed heritage items such as the Roseville Cinema, and Locally established Heritage Conservation Areas.

Your TOD SEPP Program states that the Department proposed maximum building heights of 21m, floor space ratio (FSR) of 3:1, and no minimum lot size or lot width (page 8). It also states that the new planning controls will apply in heritage conservation areas, and that relevant heritage controls will be apply to the extent they are not inconsistent with the new standards (page 11).

Similarly, the LMRH SEPP Explanation of Intended Effect has non-refusal standards for residential flats and shop top development within 400m of the relevant stations, which include a maximum building height 21m, FSR 3:1, and which also contains the statement that "***the development must not be refused consent on those grounds***" (pages 27-28). We have previously asked for, and have yet to be provided, any concrete evidence that a Heritage Conservation Area or a Locally Listed Heritage Item can be respected when these non-refusal standards are applied.

An example of FSR 3:1 is the IGA supermarket and shop top housing next to Lindfield Station at 25-29 Lindfield Avenue. It has no front, back, or side-setbacks. ***Our understanding is that if a similar building were to be proposed for a Heritage Conservation Area, it would breach all existing heritage controls but could still be approved as it would not be inconsistent with the new standard.***

The challenge extends to the in-fill affordable housing provisions which allow heights of 27.3m and FSR of 3.9:1.

So six weeks later, our query remains. How can heritage controls be respected given what each SEPP is proposing to achieve?

Traffic, Local Roads, and Other Criteria for Excellent Living

We all want the future residents of NSW to have a great place to live, and to create these spaces there is more to it than just proximity to public transport.

Great places require proximity to other features such as open space, libraries, community facilities, health and education facilities, active transport links, shops and services. And while shops and services can be provided through the developer-led TOD SEPP, the other elements require the direct intervention of State and Local Government.

And from my perspective as a mayor, we have to date had little support from the State in delivering these outcomes. Just to give you a few examples:

1. To improve liveability for the 5,000 new dwellings in Lindfield, Council had been working in collaboration with the State Government to deliver new recreation spaces, a library, community facilities and shops through the Lindfield Village project – a project which would provide a few hundred homes within the town centre before 2029. But just one day before the signing of the developer agreement, the State withdrew its share of funding despite the achievability of milestones. Council has subsequently been hit with price rises and the prospect of delivering the quantum of homes this decade has disappeared.
2. To improve liveability for the 5,000 new dwellings in Roseville, Council was in the process of consolidating residential properties to create an open space in the town centre. The consolidation requires funding from s7.11 and s7.12 Development Contributions, and Council was close to acquiring the land. However, upon the surprise announcement of the TOD SEPP, land prices have escalated significantly beyond the value of contributions set aside, and it is unlikely that Council will receive additional contributions fast enough to beat developers to the land.

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3. To improve liveability for the 5,000 new dwellings in Gordon, Council was in the process of purchasing a residential property to improve walkability and active transport options within the town centre while relieving the burden placed on the Pacific Highway. Under the TOD SEPP, the asking price escalated significantly beyond the contributions we had set apart, and it is now unlikely that Council can achieve this outcome without additional support.
4. Council has been in regular discussions with Transport for NSW (TfNSW) regarding existing bottlenecks connected to State Roads such as the Pacific Highway and Boundary Street. In some cases it may take up to 20 minutes to safely travel 300m and get past one traffic light, but TfNSW has been reluctant to entertain minor tweaks in traffic phasing, road widening with crown land, or other measures to improve safety outcomes. With 18,000 to 20,000 new dwellings from the TOD SEPP alone (and more to come under the LMRH SEPP), we expect many residents to use public transport, however, there will still be those who need to drive to their workplace whether it be a construction site, hospital, school, or industrial park. The lack of State support in improving congestion and safety outcomes is disconcerting.

These are just some examples of the issues that Local Governments face when delivering outcomes for current and future residents, and it is not the first time that I have written about this. It would be great if the State Government can come on board with making NSW a great place to live.

In particular, let's talk about funding arrangements and the power that you have as Planning Minister to introduce reform.

1. The existing s7.11 and s7.12 Development Contributions scheme is restrictive as it both limits how much can be collected and restricts the purposes and locales within which development contributions can be spent. Many councils face funding shortfalls in delivering public infrastructure, and need to either forgo opportunities or supplement with rates. The rate pegging formula from the Independent Pricing and Regulatory Tribunal (IPART) has not helped with this either.
2. The new Housing and Productivity Contributions scheme offers a secondary source of infrastructure support, however there is still much uncertainty as to whether any of the funds will go towards local infrastructure bottlenecks such as those listed above. The Department's Housing and Productivity Contribution Implementation Guideline states that the hundreds of millions to be collected from future development in Ku-ring-gai will be deployed anywhere within the Greater Sydney region and that the detailed Infrastructure Opportunities Plan will be published in late 2023 (page 16). We cannot find this plan in the public realm and in the absence of a plan, it is causing angst in the Local Government sector.

Tree Canopy

I recognise that the State and all Local Governments are proceeding with tree planting activities in the hope of achieving the target of 40% urban canopy by next decade. Council agrees with that proposal.

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However, we are not there yet and we do not understand how the proposal of maximum height of 21m plus FSR 3:1 will facilitate achievement of this target. Under similar parameters for the LMRH SEPP EIE (page 41), these ratios require only 15-20% deep soil and as such the 40% target would not be achievable.

Next Steps

Further to our discussions on 29 February 2024, I do understand why you feel that housing supply must be unlocked by way of SEPP.

However, the fundamental disagreement here is with regard to the time Council requires to carry out strategic planning, and to put adequate funding arrangements in place.

In order to **plan**, Councils realistically need 12-18 months to appropriately identify infrastructure needs within the LGA and to consult with the community in line with public expectation and Department guidelines. With Australia facing a shortage of construction workers and the ability to start with TOD Part 1 in the interim, there is no reason why the TOD SEPP and LMRH SEPP could not be deferred until June 2025 or December 2025 to allow for councils to properly conduct strategic local planning. Rushing both SEPPs in April and July 2024 will lead to inferior outcomes for the future residents of NSW. This statement applies to all councils in NSW, not just Ku-ring-gai.

In order to **fund** infrastructure improvements, Councils also require greater reform and certainty from the State Government regarding Developer Contributions, the overdue Housing and Productivity Contribution Implementation Plan, as well as the approach to rates revenue overall.

I genuinely want to work with the State Government to enable the delivery of more well-located, well-built and well-designed homes for the future residents of NSW but it has to be on reasonable and just terms. Please let me know if you would like to have our second meeting.

I'm still waiting for our second meeting!

Kind Regards

Sam

Sam Ngai
Mayor of Ku-ring-gai Council