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Online: <https://www.planningportal.nsw.gov.au/draftplans/exhibition/proposed-pathway-changes-support-transport-oriented-development>

Re Submission regarding the Explanation of Intended Effect: Pathway changes to support Transport Oriented Development

Thank you for the opportunity to provide a submission regarding the Explanation of Intended Effect: Pathway changes to support Transport Oriented Development (TOD) in the TOD Accelerated precincts.

The Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of twelve local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC acknowledges the traditional custodians of the land on which we work and live, the peoples of the Darug, Dharawal and Eora Nations.

SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of about 1.8 million, one third of the population of Sydney, including Australia's most densely populated suburbs. SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

1 Understanding

The NSW Government has released the Explanation of Intended Effect (EIE): Pathway changes to support Transport Oriented Development in the TOD Accelerated precincts. The EIE was on public exhibition from 9 July 2024 to 9 August 2024.

The proposed changes include introducing a temporary State Significant Development (SSD) pathway for residential development with a value of over \$60 million in the TOD Accelerated precincts.

It is proposed that this pathway would be in place until November 2027, with consents granted under the TOD category to also be time-limited to encourage proponents to begin works within two years.

Several special provisions are proposed to support the TOD rezoning process and streamline all residential development in the TOD Accelerated precincts. These are:

- exemption from in-fill affordable housing provisions
- exemption from low-and mid-rise housing reforms
- exemptions from certain concurrence and referral requirements, and
- an alternative design excellence pathway.

2 The TOD Program

The TOD Program, announced in December 2023 as part of the broader NSW housing response, will deliver a large volume of new dwellings in areas that leverage existing transit infrastructure investment, reflecting the NSW Government's commitment to supporting growth around transport hubs.

It identifies eight TOD Accelerated Precincts in high growth areas near transport hubs in Greater Sydney as State-led rezonings.

Land within 1,200 metres of 8 rail and metro stations will be rezoned by the NSW Government to allow for more new and affordable homes.

The 8 accelerated precincts are:

- Bankstown
- Bays West
- Bella Vista
- Crows Nest
- Homebush
- Hornsby
- Kellyville; and
- Macquarie Park

Three of the accelerated precincts are located within SSROC.

The EIE outlines proposals for:

- Exempting the TOD accelerated precincts from the in-fill affordable housing bonuses under Chapter 2 of the Housing SEPP.
 - As Floor Space Ratios (FSR) and height bonuses provided by Chapter 2 of the Housing SEPP are proportional to the affordable housing provided by a development, this exemption would allow proponents to seek additional height and/or FSR without the requirement to provide affordable housing (that would otherwise apply).
- Exempting the TOD accelerated precincts from the low and mid-rise housing reforms, which expanded permissibility of housing types in station and town centre precincts as well as providing related planning controls.
 - The EIE states this is intended to “ensure the most appropriate outcomes for the areas identified in both the [low and mid-rise housing reforms] and the accelerated TOD rezonings... The intention is to reduce duplication and maximise housing potential for lots identified in both ...”. The low and mid-rise housing reforms propose non-refusal standards for particular development, which would not apply in the TOD accelerated precincts.

- Exempting local and regionally significant development within the TOD accelerated precincts from certain concurrence and referral requirements that are not considered “high-risk”.
 - Department of Planning, Housing and Infrastructure (DPHI) is presently developing risk criteria to determine which concurrence and referrals could be switched off in the TOD accelerated precincts, and seeking feedback from stakeholders, councils, agencies and the development sector. The intention is to “switch off” concurrences and referrals that duplicate considerations carried out at a rezoning stage, or that are irrelevant. This proposal is clearly directed at reducing DA assessment timeframes – the EIE states that delayed concurrences and referrals can add up to an additional 55 days to assessment timeframes.
- Creating an alternative design excellence pathway for developments in the TOD accelerated precincts that would have otherwise required a design competition.
 - The NSW Government Architect is developing this pathway – the EIE foreshadows it being a design review process. Again, this proposal is directed to reducing timeframes for the preparation and assessment of DAs. The need to undertake a design competition lengthens preparation time, as a proposal with detailed supporting documents cannot be put forward until the design is settled via the competition.

3 General Comments

SSROC welcomes the opportunity to provide a submission to the DPHI EIE: Pathway changes to support Transport Oriented Development in the TOD Accelerated precincts.

In principle SSROC is supportive of reducing timeframes for the preparation and assessment of DAs. However, many of the proposals contained in the EIE are only very high-level statements of intent and lack the necessary detail to adequately assess their effectiveness. It will be vital that local councils are consulted before the detailed arrangements are finalised.

4 Issues and Recommendations

SSD category for TOD accelerated precincts

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

As a principle, SSROC objects to the continued trend by successive State Governments to remove local councils from the assessment process by lowering SSD thresholds. The assessment of all applications should remain the responsibility of councils as the holders of local knowledge and the long-term interests of the TOD precincts and the surrounding communities.

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



This EIE proposal is of particular concern to councils because the low threshold value assigned to determine what is “state significant” means that many applications will be determined by a state government approval pathway, bypassing local community participation and diminishing the role of local government and planning panels in the decision-making process.

This proposed provision further removes decision-making from councils and their communities. Councils point to frequent instances of inadequate consideration of local planning, such as the provision for local infrastructure and consideration of local infrastructure contributions, when development is assessed under this pathway.

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

If an SSD pathway is to be adopted, Councils must remain a key stakeholder in the assessment of such applications to ensure locally specific standards or outcomes are maintained.

Exemption from in-fill affordable housing provisions

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

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

SSROC is supportive of TOD precincts being exempted from the in-fill affordable housing provisions of State Environmental Planning Policy (Housing). Bonus Gross Floor Area and Building Height provisions should not be available in precincts that are subject to master planning and where maximum densities and envelopes were determined by a detailed strategic planning and urban design process.

It is requested that DPHI confirm how other precincts that have been the subject of detailed master plans can be exempted from the in-fill affordable housing provision of the Housing SEPP.

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

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

It is recommended that DPHI urgently provide their precinct teams with a model affordable housing contribution scheme and template for establishing compliant schemes in the accelerated precincts, so schemes commence with the upzonings.

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

Exemption from low and mid-rise housing reforms

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

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

For example, the Homebush Accelerated Precinct and the North Strathfield TOD precinct both apply to land in North Strathfield. It is requested that the mapping layer associated with the Housing SEPP be updated to illustrate the North Strathfield TOD no longer applying to land within the Homebush Accelerated TOD (i.e., on the western side of the rail line).

The commitment in the EIE to fully assess the interrelation between the LMR housing reforms and accelerated TOD rezonings to reduce duplication and maximise housing potential is welcome.

However, the EIE contains no detail on how this will be done and what the impact will be. In the absence of any meaningful explanation of intended effect, any changes must be undertaken in close consultation with the relevant councils.

Exemptions from certain concurrence and referral requirements

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

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

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

The EIE does not state which concurrence and referral requirements will no longer apply. It is therefore difficult to confirm whether the exemptions will have a material impact on the assessment of State Significant Development Applications. It is vital that the parameters of high and low risk are further defined.

In the removal of concurrences and referral requirements, DPHI must be satisfied that relevant issues will be addressed by development controls applying to each TOD area or through the imposition of appropriate conditions of development consent.

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

As a result, it is critical that:

- State Government agencies receive general notifications and referrals of the state significant development, with an invitation to review and give concurrences
- councils have the opportunity to review and endorse any exemptions proposed

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

As a consequence, the proposed risk criteria need be developed with input from both state agencies and local councils.

For clear accountability and public transparency, it is recommended that a *Risk Register* for managing exemptions be maintained for referrals and concurrences that are not sought in each Accelerated precinct. This should also include the hazards and detrimental impacts that need to be considered in conjunction with the risk likelihood.

An illustrative example of this is outlined below.

Risk	Risk rating	Impacts/Hazard	Impact rating	Mitigations		Decision about concurrence and referral/ decision-maker
				Current	Proposed	

SSROC notes that the EIE asks stakeholders which concurrence and referrals could be switched off through the development process. This is somewhat alarming as the Department has only recently published a *Development Referrals Guide* (October 2023). For consistent application of the planning rules, this document should be updated to better codify common exemptions.

Alternative design excellence pathway

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

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

SSROC objects to the dilution or removal of design excellence competitions where they are in place. The absence of local involvement risks long term harm to the quality and liveability of TOD precincts. SSROC is therefore not supportive of moves to bypass existing design excellence pathways.

Design competitions are a well-tested and successful model for delivering a high quality of design and innovation. Competitions generate a range of responses to each design challenge, allowing the comparative evaluation of different approaches. This enables participants to analyse the relative merits of different responses to a brief and builds confidence in the selected design as the best response. For example, the Canada Bay Local Strategic Planning Statement includes an action to implement design excellence competitions and Clause 6.14 of the Canada Bay Local Environmental Plan requires competitions for buildings with a height of 28m or 8 storeys.



There are instances of architectural firms producing high quality buildings through competitive design processes and the same architects producing suboptimal buildings when directly engaged by developers. Simply including an architect on a list due to their experience preparing a high-quality building is not sufficient to ensure a good outcome.

Where a sub-par building is designed, design review panels will be put in a position of having to improve the building design as opposed to facilitating good design from the outset. It is therefore requested that Accelerated precincts be subject to competitive design excellence processes. SSROC understands this proposed new pathway is being developed by the NSW Government Architect and will involve a design review process and requirement regarding selection of architects.

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

If the proposed Design Review process is adopted it is recommended that all applications be considered by the State Design Review Panel on at least one occasion and be returned to that panel if amendments are required to the application to meet the Design Excellence Standard.

5 Conclusion

Thank you for the opportunity to provide a submission regarding the Explanation of Intended Effect: Pathway changes to support Transport Oriented Development, in the TOD Accelerated precincts.

SSROC member councils cover a large part of Greater Sydney and include three of the Accelerated TOD precincts. SSROC notes that many of the proposed changes require further work to develop policies and processes to implement them. DPHI must consult further with councils as these are progressed. Our councils pride themselves on providing orderly, well considered place-based planning for their communities. This submission advocates for this to continue by promoting council led master planning and development approvals to achieve expeditiously the NSW Government's goal of density done well.

In order to make this submission within the prescribed timeframe, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC. I will contact you further if any issues arise as it is reviewed. If you have any queries, please do not hesitate to contact me or Mark Nutting, SSROC Strategic Planning Manager on 8396 3800, or ssroc@ssroc.nsw.gov.au.

Further consultations around the detail of the proposed housing reforms as they are refined will be essential. These should occur as soon as they are available for consideration by councils and at the regional level, by their regional organisations like SSROC.

Yours faithfully

A handwritten signature in black ink that reads 'H Sloan'.

Helen Sloan
Chief Executive Officer
Southern Sydney Regional Organisation of Councils