

Mr David Marshall
General Manager
Ku-ring-gai Council
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10 December 2024

Dear Mr Marshall

Re: S14715-1: Ku-ring-gai Council's Transport Oriented Development (TOD) Alternate Housing Scenarios.

Friends of Ku-ring-gai Environment (FOKE) is committed to ecologically sustainable development and supports Ku-ring-gai Council's stated planning principles of protecting environmentally sensitive areas, heritage houses, heritage conservation areas, tree canopy, and planning for appropriate building heights and FSRs.

FOKE welcomes the opportunity to respond to Ku-ring-gai Council's public exhibition on the five scenarios to deliver new housing supply around Roseville, Lindfield, Killara and Gordon Railway Stations which will deliver the NSW government's TOD policy target of 23,200 homes over fifteen years and 7600 over the next five years.

FOKE supports Council's stated priority to seek to retain and protect heritage and improve urban tree canopy outcomes.

However, FOKE believes that by limiting planning criteria to these two critical constraints, other critical important factors are being overlooked. These include traffic and parking management, infrastructure and services needs and capacity, bushfire and flooding risks, and climate change considerations - all determinative for managing population growth sustainably.

In our view all alternative scenarios abandon robust planning assessment processes necessary to ensure development is tailored appropriately to local contexts and needs.

Scenarios proposing new heights of 15 to 45 storeys (height standards which will also allow for a 30% uplift of development proposals) will not just set new precedents for the TOD areas, but for the whole of Ku-ring-gai! This is not explained in Council's documents.

FOKE has examined the five TOD scenarios (the NSW Government TOD and the four Ku-ring-gai Council alternate scenarios). FOKE is unable to support any. None of scenarios will deliver ecologically sustainable development. All scenarios will negatively impact on neighbourhood character, tree canopy and green spaces, biodiversity, privacy, traffic and parking, heritage, infrastructure as well as setting precedents for increased heights and FSR across the entire Ku-ring-gai local government area.

FOKE does not support the alternate scenarios because:

All scenarios pose significant environmental risks to Ku-ring-gai

- All scenarios pose significant risks to Ku-ring-gai's tree canopy, biodiversity, and will lead to further degradation of Blue Gum High Forest and the Sydney Turpentine Ironbark Forest both critically endangered ecological communities under NSW legislation and Federal legislation, which Ku-ring-gai Council has a responsibility to protect.
- There are currently no recovery plans in place to enable these two critically endangered ecological communities to survive and regenerate. Most of the remnants occur along Ku-ring-gai's rail corridor and in private gardens.
- The TOD alternate scenarios are not fit for purpose in the face of the climate and biodiversity crisis. The proposed scenarios will lead to the destruction and fragmentation of critical tree cover and jeopardise wildlife corridors essential for biodiversity and climate change mitigation.
- Ku-ring-gai is one of Sydney's most fire-prone areas, and yet this has not been considered, raising concerns about resident safety and environmental degradation.
- No environmental studies have been carried out to support the scenarios.
- The delivery of additional open space and parklands will be a significant problem due to the upzoning of land and the higher cost for Council to purchase land.
- The TOD alternate scenarios allow further degradation of the environment, the tall tree canopy, and the diversity and habitat of fauna, which distinguishes Ku-ring-gai from other parts of Sydney that have succumbed to overdevelopment and where their natural areas and critical habitat have been cleared.
- Analysis of the proposed built forms and their impact on the local character of Ku-ring-gai is not provided in any detail.

All scenarios pose significant heritage risks to Ku-ring-gai

- The proposals will incentivise partial or complete demolition of heritage buildings due to impacts of adjacent over-scaled infill development and loss of garden settings.
- Once existing building fabric is demolished, or a setting is degraded with over-scaled infill development, the impact on heritage is irreversible.
- There is no guarantee from the proposed blanket increases in the scenarios that there will be the capacity to properly evaluate and mitigate heritage impacts.
- According to Council's TOD submission "There is the issue of case law which has established 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."
- Not all relevant environmental issues have been considered in the alternate scenarios.
- There is no evidence that any of the scenarios include the requirement to protect the fabric and garden setting of listed heritage conservation areas and heritage items e.g. TOD scenario 3b will impact the 800m HCAs and heritage items. The majority of Ku-ring-gai's high quality intact Heritage Conservation Areas (HCAs) are located within 800 metres from the railway as shown on Ku-ring-gai Council's maps.
- The different scenarios imply that some HCAs have less value than heritage items and therefore do not warrant the same degree of conservation. Conservation areas have collective value as cohesive precincts. As the majority of Ku-ring-gai HCAs occur within 800 metres from the rail stations the TOD SEPP scenario will impact on the heritage in adjacent Low and Mid-Rise zones. Council neglects to point out in consultation sessions that proposing 5-8 storey development adjacent to HCAs in the 800 metre zones will set a precedent for all Low and Mid-Rise zones in Ku-ring-gai.
- Ku-ring-gai HCAs and heritage items are considered to be of National significance by the National Trust of Australia (NSW), and therefore need to be afforded the relevant protection and care.

Flawed TOD Controls

- The overriding mandatory TOD 23,300 dwelling targets (23,200 x 2.5 people per dwelling = 58,000 proposed new people) will increase stress on environmental and heritage protections, schools, medical facilities, services and utilities, parks and playing fields.
- FOKE has consistently argued for the upholding of Council's strategic planning and LEP standards – but any scenario above this + 30% uplift will set dangerous precedents not just for the four TOD suburbs, but right across Ku-ring-gai.
- The Alternative TOD alternate scenarios lack a comprehensive assessment of their cumulative impact particularly and in considering the Low and Mid-Rise Housing SEPP housing targets (still to be announced by the NSW Government) within 800 metres of every railway station in Ku-ring-gai, which will potentially add thousands of additional dwellings within gazetted HCAs destroying Ku-ring-gai's urban tree canopy.
- With the NSW Government's recent establishment of the Housing Development Authority (HAD) announced to commence in January 2025, developers will have the ability to bypass Council for spot rezonings and development approvals ignoring any scenario Council approves in February 2025.
- The proposed 15 - 45 height limits scenarios will extensively tower over the tree canopy heights, which is the predominant landscape character of Ku-ring-gai.
- The State Government's TOD SEPP and Council's four alternate scenarios are driven primarily by Housing Policy objectives rather than a fully integrated economic, social, and environmental vision and those objectives which are contained in the regional, district and local strategic land use plans which have been developed in conjunction with the NSW Government.
- FOKE is concerned that the rolling out of the NSW Government Housing Policy is severely undermining NSW's existing statutory strategic planning framework and other local strategic planning that Ku-ring-gai Council has undertaken.
- FOKE understands that the NSW Government only assessed 'water and wastewater capacity' in developing the TOD Tier 1 & 2 SEPPs. Council has also failed to provide and release evidence-based studies (apart from a limited heritage assessment) for supporting the TOD alternate scenarios.
- There is no detailed analysis of proposed built form controls and their impact on the local character of Ku-ring-gai.
- Many sites within the TOD areas are development-constrained by one or more of the following – biodiversity, riparian land, bushfire prone lands, steep topography, land use e.g. RE1 land, strata title and heritage. Exhibiting five scenarios without significant master planning the TOD scenarios is 'putting the cart before the horse'.

Alternative Scenarios do not have Baseline Study Evidence

- There is no evidence of baseline studies (apart from a preliminary heritage study) which assess the potential of 23,200 dwellings proposed for within 160 hectares, or five kilometer stretch of the railway corridor, on the environment, heritage, traffic and parking, or infrastructure.
- The NSW Government only assessed 'water and wastewater capacity' in developing the TOD Tier 2 SEPP. Moreover, Council has ignored its long-term strategic planning in not providing any analysis of Ku-ring-gai's infrastructure capacity in developing the TOD alternate scenarios. The failure to provide and release evidence-based studies is undermining and threatening local strategic planning processes.
- Nor is there an evaluation of the cumulative impact of the additional housing that Ku-ring-gai has experienced since 2000 and its impact on Ku-ring-gai's canopy, threatened species, seed bank, waterways, weeds, biodiversity decline, infrastructure or traffic and parking.
- Deep excavations for underground parking 'mines' critically endangered tree seed stock, putting at risk the regeneration of ecological communities.

- The exhibition of the TOD alternate scenarios mentions seven principles for good planning without the necessary baseline studies or master planning to ensure the principles can be met.
- All five TOD scenario maps only delineate the 400 metre TOD areas and not the 800 metre areas which are proposed to be impacted by 3b's scenario which supports increased height and FSR standards.
- There is still the potential for significant canopy loss with the alternate scenarios.
- The TOD scenarios are likely to exacerbate the problem for the protection and conservation of heritage within 800m of every rail station in Ku-ring-gai. The alternate scenarios do not provide any certainty of appropriate conservation of heritage in Ku-ring-gai due to knock on effects.
- The proposed increase in FSRs, and heights, in the alternate scenarios are far in excess of existing significant built form in Ku-ring-gai or the standards set in the TOD SEPP and possibly why residents are questioning (following the mediation concessions on the TOD) why council is not considering spreading the dwelling targets more evenly across Ku-ring-gai, particularly if the 23,200 TOD dwelling count can be met.

Problematic Timing of the Public Exhibition

FOKE argues that the alternative scenario exhibition was premature and should have waited until the results of Ku-ring-gai Council vs NSW Government TOD legal action in the Land and Environment Court of NSW.

The public exhibition from 15 November to 17 December 2024 is also one of the most challenging times of the year for public consultation as it leads up to Christmas. FOKE expressed this concern in a letter to the Mayor Cr Christine Kay 11 November 2024 and at a meeting with the Mayor, General Manager David Marshall and Virginia Leafe, Corporate Communications Manager on 21 October 2024.

Divisive nature of Alternative TOD Scenarios

- The burden has been placed on residents who are asked to select a preferred scenario without evidence-based information to make properly informed decisions.
- FOKE also has real concerns that submissions will be based on individual financial or other personal circumstances rather than strategic planning objectives.
- The scenarios are divisive. They pit neighbour against neighbour, street against street, community against community, suburb against suburb and the western side of the railway against the eastern side of the railway line.
- A scenario that benefits one community may create challenges for other neighbourhoods and communities, especially in terms of heritage protection, traffic congestion and parking, environmental degradation, bushfire risk and lack of adequate local infrastructure and services.

Undemocratic

- FOKE sees the NSW Government's unilateral imposition of four TODs as an attack on local democracy and as such must be rejected by Council and the community. The community expects Council to stand by its planning principles relating to the TOD which were expressed in Ku-ring-gai Council's TOD submission to the NSW Government, 20 February 2024.
- The fact that Ku-ring-gai's TOD selection remains in 'Cabinet in Confidence' shows there is no transparency as to why the State Government imposed four Ku-ring-gai Tier 2 TODs in areas of environmentally sensitive land, with local heritage items and heritage conservation areas. This is why Council was so critical of the TOD policy and took legal action.
- Effectively Ku-ring-gai is receiving the equivalent of three Tier 1 TODs without master planning, financing, or any proposed funding of new infrastructure to support a population increase of 58,000 residents.

- The alternate scenarios do not consider the non-refusal standards under the TOD SEPP.

Deregulation of NSW Planning System

- FOKE has no confidence in the NSW Department of Planning, following NSW Premier Chris Minns' announcement that a new three-person Housing Delivery Authority (HAD) will be established effective from January 2025 and which will override local government planning powers and bypass Councils for the approval of development and spot rezoning proposals over \$60 million. This will allow a significant number of TOD proposals to be decided by a NSW Government's 'gang of three'.
- The appointment of the HAD may render the alternative TOD scenario public exhibition and selected scenario by Council as redundant with applicants bypassing Council and going straight to the HAD with development and spot rezoning proposals.
- The deregulation of the NSW planning system will create a "wild west" planning system where developers will be given free reign to apply for spot rezoning and the approval of development applications above \$60 million avoiding council processes.
- The current NSW planning system will be fraught with uncertainty as to guaranteed protections for the environment, heritage, and other planning constraints.
- The community is yet to understand what recommendations the NSW Government will accept following the receipt of the NSW Productivity & Equality Commissioner's [Review of housing supply challenges & policy options for NSW Final Report](#) released in August 2024 that includes 32 recommendations to boost more housing in NSW, particularly for the northern and eastern suburbs which the commission understands may have the capacity.

Lack of infrastructure

- It is unacceptable that 7,600 dwellings will be required to be built in five years without first addressing the demands and provision for increased any infrastructure – water, sewerage, and energy; and provision of services - primary schools, high schools, hospitals, community centres, sporting facilities, fire stations, police stations etc. and associated funding.
- The addition of 23,000 new dwellings will strain existing infrastructure, including sewage, water capacity, transport routes, traffic flow and parking.
- The delivery of the Recreation Needs Study and the s7.11 Contribution Plan will need to be reviewed for the TOD as the resident growth prediction from approximately 23,300 dwellings will potentially deliver a population increase of 58,000 residents, or a potential 50% increase in residents in the TOD. These figures do not take into account the proposed dwelling count of the Low and Mid-Rise areas of Ku-ring-gai.
- With Council unable to get background data from the NSW Government, the infrastructure assessment for the TOD undermines a review of s7.11 contributions plan, which relies on extensive supporting documentation and a fully costed works programme with demonstrable nexus to the increased demand and the need to drive and appropriate defensible contribution rate that will be able to deliver adequate supporting infrastructure e.g. local parks, public domain works, provision of new parks etc.
- The Low and Mid-Rise SEPP will also potentially result in a huge increase in new dwellings that will have increasingly poor access to transport, shops and services, resulting in cumulative traffic and parking impacts to and in the TOD centres which have not been evaluated or quantified, including the likely further detrimental loss of significant heritage conservation areas, and tree canopy and biodiversity.
- There is no traffic impact assessment or parking study provided to support the alternate scenarios. Traffic and parking effects are likely to greatly exacerbated particularly in Gordon, Lindfield, and Roseville centres.
- There is no study of infrastructure requirements and associated funding needed for libraries, community centres, long day care centres, parks and sporting facilities etc.

Lack of new green space, parks and playgrounds

- One of the most concerning aspects of the TOD alternative scenarios is that there is no plan for more open spaces and parkland for a 50% population increase. Additional green space and parks requirements must be determined before any decision is made on the scenarios.

Affordable housing

- The delivery of additional medium and high-density housing will not deliver or create more affordable housing due to the high cost of land and particularly with the uplift in land value from TOD sites being significantly upzoned.
- The proposed 2% affordable housing contribution is totally inadequate and should be significantly increased, or the unaffordability for housing key workers will remain.
- The affordable housing provision should be in perpetuity.
- Existing affordable housing types such as two storey flats should be retained.

Conclusion:

The proposed alternative TOD alternative scenarios for Ku-ring-gai do not adequately prioritise the environment, heritage, climate change, or the existing and future infrastructure and service needs.

The scenarios will lead to the loss of essential tree canopy and biodiversity, destruction of heritage items and sites, loss of neighbourhood character, and increased pressure on existing infrastructure.

Due to the multiple issues cited and the highly destructive outcomes that could result from the alternate scenarios, FOKE cannot support them. The five TOD scenarios continue to undermine NSW's existing statutory strategic planning framework.

With approximately 80-90% of Ku-ring-gai's urban land being upzoned with the State Government's TOD and Low and Mid-Rise SEPPs we believe that Ku-ring-gai Council should be putting forward alternate proposals for a more a balanced 'whole of Ku-ring-gai' strategic planning approach. The current segmented approach of dealing with separate SEPPs will be far more detrimental and problematic in achieving and delivering Ku-ring-gai Council's seven stated planning principles.

FOKE urges Ku-ring-gai Council to continue the legal action against the TOD and prioritise planning that will deliver high quality urban outcomes which respect the built and natural environment, ensuring future growth is ecologically sustainable and community focussed, and is supported by NSW Government funding.

Yours sincerely,

Kathy Cowley

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President

cc. Mayor and Councillors Ku-ring-gai Council

cc The Hon Alister Henskens SC MP Member for Wahroonga

cc Matt Cross MP Member for Davidson

cc The Hon Paul Fletcher MP Member for Bradfield