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19 August 2024

Sue Higginson MLC
Chair

Portfolio Committee No. 7 - Inquiry into the development of the Transport Oriented Development program

By email: PortfolioCommittee7@parliament.nsw.gov.au

Dear Chair

Thank you for the opportunity for representatives of Local Government NSW (LGNSW) to appear before a hearing of the Portfolio Committee No. 7 Inquiry into the development of the Transport Oriented Development program.

Please see below responses to questions on notice taken during the hearing.

KPMG report

The Hon. SCOTT FARLOW: To that point—and, Councillor Turley, you raised it at the beginning as well—in terms of housing targets and what council can actually control, so to speak, council might be able to control how much you zone for. Council may be able to control potentially how much you approve that might come to council, but actually delivering the homes is not something that council has within its bailiwick. What do you think would be a better measure for councils to be able to determine their willingness to be able to assist in addressing the housing crisis?

DARRIEA TURLEY: I think you're right. I think, for our local government areas, they don't have the control on what's being built. The research has been there. KPMG have given good research about how many homes have been approved and how many dwellings have been approved but not built. I think the Government is challenged by that—about how they manage the market and how they manage those developments. I know that there is an inquiry into zombie DAs coming up, but there is this complete frustration by councils about their planning zones when they see that the reality is that they don't build the homes. Yet they are the ones that quite often come under attack. For all that, I think it would be an interesting conversation about how we actually look at and address those issues about DAs coming to fruition.

The Hon. SCOTT FARLOW: If I could ask, on notice, if you could provide us with a copy of that report that you reference. That would be helpful as well.

DARRIEA TURLEY: Yes. Sorry, I think it was "Housing product crisis deepens as new homes are stalled," by KPMG. We'll provide a copy of that report.

LGNSW response

The information referred to during the inquiry is KPMG analysis showing an increasing number of approved but not yet commenced homes. This analysis, titled 'Housing crisis deepens as new homes struggle to get out of the ground', was published on 29 May 2024 and is available online at <https://kpmg.com/au/en/home/media/press-releases/2024/05/housing-crisis-deepens-as-new-homes-struggle-to-get-out-of-the-g.html>.

The KPMG analysis found that the number of new dwellings approved but not commenced in NSW was over 15,000 by the end of last year. About 80 per cent of the projects that had not commenced were townhouses and apartments.

Teralba TOD precinct

The Hon. SCOTT FARLOW: But, Mr Reynolds, with respect, the nuanced local discussions have to an end there in Teralba, because the SEPP applies in Teralba. I don't see that Lake Macquarie council are seeking to change their position in terms of the heritage conservation areas. There's been no report of that. So where does it end in terms of the application of the proposal? Is it just going to be left up to the courts when somebody brings a DA along?

DAVID REYNOLDS: We all know that matters ending up in court is not the preferred outcome. That incurs great cost for councils on behalf of their community and also frustrates the development sector. I'm happy to take on notice that particular circumstance. I acknowledge the issue you're calling out. I acknowledge that it's a matter that, if we can solve it generally, will provide some clarity around these issues for councils and proponents of development. Where we don't want to end up is in a cycle of frustration and uncertainty, and lose social value or community resources because of that. I very much acknowledge the issue that you're calling out. This particular instance about Teralba may well be one that crystallises an example of a thing that we should really try and solve more positively. But I am happy to come back further on that one with a little more detail.

LGNSW response

In general terms, it is a long standing position of LGNSW that one-size-fits-all approaches to planning fail to give regard to the very different planning contexts and urban typologies in each precinct, and are contrary to principles of doing density well. Democratically elected councils are best placed to understand the constraints and opportunities in their local government areas. Councils know how and where growth and density can be most suitably accommodated, and at times this will include identifying certain areas for increased density while maintaining certain controls in others. The NSW Government should work with councils to plan for good growth and density in locations that can support it.

LGNSW has sought input from Lake Macquarie City Council that provides further details on the outcomes that council would like to see for the Teralba precinct. This input is set out below.

Input from Lake Macquarie City Council

Most of the area around the Teralba train station is located within a heritage conservation area contained in the Lake Macquarie Local Environmental Plan 2014 (see Figure 1 below). The Teralba Heritage Conservation Area (HCA) is one of only three HCAs in Lake Macquarie City.

An amendment to the Lake Macquarie Local Environmental Plan 2014 and Lake Macquarie Development Control Plan 2014 was completed in August 2022 for the Teralba area to protect the suburb's heritage significance and facilitate appropriate development within the Teralba HCA. This included a change to the HCA boundary, a reduction to the maximum building height from 10m to 8.5m and introduction of development controls for properties within this area recognising the contribution they provide to the heritage significance, and protection of significant views and vistas that contribute to the heritage setting.

Proposed changes under the TOD program, especially the proposed introduction of the 24m height limit, are inconsistent with the local context and development of this scale would likely affect the character of the heritage conservation area. The 24m height limit and other changes are inconsistent with recent changes to Lake Macquarie Local Environmental Plan 2014 and Lake Macquarie Development Control Plan 2014 which sought to preserve the value of the heritage area (including the reduction of the building height).

While a full merit assessment for each development application will still occur, it will be challenging to undertake a reasonable merit-based assessment given the significant difference between planning controls, including the current LEP permitted building height, and the 24m building height under the TOD Program. Particularly challenging will be assessing how larger buildings will not detrimentally impact the low-scale character of the heritage conservation area, and resolving amenity impacts such as visual privacy and solar access, particularly where heritage items will retain a low-scale built form and any TOD development will be of a conflicting scale and impact.

Given Council's past experience, it is anticipated there will be significant public objection to any TOD development in Teralba, which is likely to make the assessment process uncertain and lengthen assessment timeframes, which conflicts with the State government's objective for fast and efficient development assessment, particularly in relation to housing applications.

Council staff believe a lower height provision for this area could still deliver the increased density outcomes desired by the program. There are several examples of this having already been approved/delivered in the R3 zone around Teralba, noting these applications also faced substantial public objection, however, were ultimately resolvable.

Aside from planning and development assessment issues associated with the TOD SEPP, significant upgrades are needed to Teralba train station to enable use by larger numbers of people. The station is not accessible and not long enough for all inter-city trains. There are no toilets or ticketing facilities available and current train services are too infrequent (one train per hour during weekdays, one every two hours on weekends and public holidays) to support rail transport as a viable option for higher density living.

In Council's submission to consultation on the TOD SEPP earlier in 2024, staff recommend that the proposed TOD SEPP provisions (particularly height) relating to Teralba be reconsidered for the reasons provided above.



Figure 1: Teralba Heritage Conservation Area shown in hatched within red outline and heritage listed sites shown in orange and the Teralba train station shown by yellow dot (Source: Lake Macquarie City Council)



Thank you again for the opportunity to provide evidence to this inquiry. For further information, the committee secretariat is welcome to contact LGNSW Director Advocacy Damian Thomas on [redacted] or at [redacted].

Yours sincerely

Cr Darriea Turley AM
President

Mr David Reynolds
Chief Executive