

Better Planning Network Submission

on the Explanation of Intended Effect: Changes to create low and mid-rise housing, NSW Department of Planning and Environment.

February 2024

Thank you for the opportunity to make a submission on the NSW proposed Housing policy reforms.

Better Planning Network (BPN) is state wide, not for profit organisation advocating for a planning system that fosters best practice environment, heritage, social sustainability and design outcomes.

1. SUMMARY

The NSW government has proposed two major housing proposals, the Transport Orientated Development (TOD) and the Low- to Mid-rise Housing Reforms. Although this submission focuses on the Low- to Mid-rise Housing Changes, currently on exhibition, the issues are similar for both proposals. For the TOD precincts the impacts or issues relative to the TOD proposal should not be considered in isolation but the issues and impacts of both proposals must be considered to appreciate the full extent of implications of the proposed planning changes.

The Transport Orientated Development (TOD) has designated fast-tracked rezoning of 8 precincts and introduced new planning standards to 31 stations. The TOD will be included as a TOD State Environmental Planning Policy (SEPP).

- The TOD excludes community input or public exhibition.
- It was released in December giving minimal time for affected councils to comment.
- No analysis or evidence is available as to why these stations were designated or how it was determined that capacity in these locations exists to accommodate the density, height and population increase imposed.
- No design standards have been given, the Australian Design Guide remains the guide for residential flat buildings. A 'pattern book' of designs is yet to be released.
- It will apply to Heritage Conservation Areas (HCAs).

The Explanation of intended effect: Changes to create Low- to Mid-rise Housing

The objective is to deliver more housing, diverse housing and affordable housing by state-imposed rezoning of the Greater Sydney Region and by overriding council Local Environment Plans (LEPs) and Development Control Plans (DCPs).

- The changes were released in December and put on exhibition with minimal time for the public to comment.
- The reforms apply to the 'Six Cities' region stretching from Wollongong to Port Stephens and west to include the Blue Mountain except for dual occupation which applies to all R2 land in NSW
- The changes and state-imposed zonings were determined without any participation from the community.
- The changes will apply within Heritage Conservation Areas.

2. RESPONSE

While the Better Planning Network (BPN) acknowledges the need for increased delivery of diverse and affordable housing, BPN however is disappointed by the autocratic process adopted by this government which undermines the principles of good planning including community consultation, respect for heritage, environmental considerations, liveability, sustainability and the lack of consideration of the wider policy implications. Z

In BPN's opinion the planning reforms fail to satisfy a number of objects of the *Environmental Planning and Assessment Act 1979* such as affordability and also the following objects:

Environmental Planning and Assessment Act 1979

Objects of Act

(cf previous s 5)

The objects of this Act are as follows—

- (c) to promote the orderly and economic use and development of land,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The Better Planning Network (BPN) is seriously concerned, and it objects to the widespread changes to the existing planning system. The increased densities proposed without infrastructure or employing proper planning principals is fundamentally flawed.

Overriding council LEPs and planning controls such as those that protect heritage and environment, lack of evidence based strategic planning, failure to address capacity and the cost of supporting infrastructure to name some issues of concern. Further, the simplistic view that expediting development to increase housing supply and that increasing supply alone will resolve the housing affordability crisis is disingenuous.

There is a lack of political will and co-operation between Federal Government and the States to provide a genuine and permanent solution to the housing affordability crisis. The current proposals for a quick fix, lack long term vision and sincere interest in the public good.

PRINCIPAL CONCERNS

2.1 The blanket 'one size fits all' does not follow good planning principles.

- The proposals fail to consult meaningfully. The Planning NSW Community participation plans (CPP) states *"we want to make it easier for all members of the community to participate in planning decisions. This results in better outcomes."* The Environmental Planning and Assessment Act 1979 (EP&A Act) requires planning authorities to engage the public in their decision making.
- Councils' Local Environment Plans developed with community input as well as Development Control Plans will be overridden. Not only are LEP's developed over time with consideration of context, constraints, desired future character but the resources and time put into developing these plans will effectively have been wasted.
- The proposal is contrary to the Department's policies and place-based planning.
- The lack of public participation results in diminished community acceptance.
- The proposals are inconsistent with SEPP65 Principle 3: *Built Form Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality*".
- The proposals arbitrarily draw rings around centres and impose zonings without giving any consideration to context. The blanket 'one size fits all' approach is inconsistent with principles of good planning. As expressed in SEPP 65 Part 2. Design quality principles, *"Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas. "*
- The introduction of Non-refusal Standards will override local planning controls developed with community to deliver a vision for each area. The participation of community and unique local character is threatened.
- There is no evidence-based analysis provided to substantiate the planning proposals as exhibited.

2.2 Affordable Housing

- The intended effect of reforms to expedite delivery and increase housing supply claims this will solve the housing affordability problem. While it is agreed that supply contributes to housing affordability, it is unrealistic to consider it alone.

It is convenient for politicians to ignore the hard decisions and take an easy way out by concentrating on extreme and radical planning. It is not in the interest of developers to bring market prices down if it affects their profits. Some developers deliberately drip feed of land releases or housing to maintain price levels.

Many factors contribute to the increase housing costs including increased demand. Genuine solutions to the affordability problem must include Federal and State Government collaboration to act on tax reforms and policy reform that deal with the following:

- Population growth increases the demand for housing and as such effects on demand resulting from natural and immigration population rates must be reviewed.
 - Housing supply is also limited by the short-term rental market such as Air BnB, the unoccupied investor or foreign owned properties. To free up properties impose disincentives such as levies on short-term rentals, and investment properties – particularly unoccupied properties.
 - Abolish stamp duty, and adopt a broad-based land tax.
 - Greater investment in public housing is required.
 - There is evidence that policies including concessions and grants to first time home buyers does not work,
- According to the Grattan Institute, the most direct way the federal government can improve affordability is by reforming tax and welfare policies that distort demand for housing. The Federal Government can improve housing affordability somewhat – and immediately – by reducing demand. It should reduce the capital gains tax discount from eg. 50% to 25%; also reduce negative gearing benefits.
 - With regard to the reforms, an analysis of how the affordable housing definition would apply in areas with higher land values, to determine if the desired outcome is achievable.
 - The existing In-Fill Affordable Housing bonus provisions of the Housing SEPP (introduced in 2023) will continue to apply. This enables 10-15% of gross floor area (GFA) as affordable housing to receive a bonus of 20-30% FSR for residential flat buildings and shop top housing. Developers only have to assure the properties remain affordable and managed by a registered community housing provider for a minimum 15 years. This limited period is not sustainable, affordability must be in perpetuity.
 - Alternatively, consider a scheme requiring 5-10% of FSR of private developments are dedicated to social or affordable housing rather than giving developers bonus.

2.3 Environment

- The small 430 sqm minimum lot sizes for duplexes, the lack of minimum lot sizes for mid-rise, the imposed State Government controls, inadequate deep soil landscaping and Non-Refusal Grounds will result in a significant loss of canopy tree. This is in conflict with State Government's Urban Tree Policy. As most trees that contribute to the canopy are on private property, Councils will therefore not be able to comply with the State Government Policy to provide 40% canopy tree cover by 2036 in Greater Sydney.
- It is predicted that with climate change temperatures will rise and that Australia will be subjected to more frequent and more severe natural disasters. Blanket increased density in bushfire prone and flood prone areas is irresponsible and unreasonable. Bushfire and flood prone lands must be identified in the TOD and

Low-rise & Mid-rise Housing, and must be exempted.

- The Department of Climate Change, Energy, the Environment and Water (DCCEEW) is being recommended to adjust 2016 IFDs (Intensity, Frequency, Duration factors and rainfall design) to better represent current climate conditions – this recommendation implies that ‘current climate’ risk may be significantly underestimated in the existing flood studies supporting FMA Members’ risk management decisions. Housing should therefore not be allowed in additional flood prone areas resulting from this updated climate change impact.
- No evaluation of the environmental impact of the proposed changes have been undertaken.
- A number of urban areas include large remnants of Critically Endangered and Endangered Ecological Communities or Species. It is of concern that direct and indirect impacts of increased density are being overlooked to expedite development. The *Biodiversity Conservation Act 2016* provides for considering biodiversity at the early stage of land-use planning and integrating biodiversity conservation with development control processes. The state-imposed controls overriding council LEP’s and DCPs and the proposed Grounds for Non-refusal do not allow for this and the reforms area a serious threat to the conservation of environmentally sensitive lands.

2.4 HERITAGE

- HCAs are precincts consisting of streets, gardens, parklands and buildings of historical significance. They contribute to the identity of an area and a sense of place (a planning objective). They are recognised and listed in LEPs. It is objectionable and that under the proposed reforms they are at risk of irreversible damage or loss.

Although documents state that local heritage controls and clause 5.10 of an LEP would apply and, in the case of the TOD a merit-based assessment of heritage will apply to developments in HCA’s, the local heritage controls would only apply *‘to the extent that they are not inconsistent with the new standard’*.

The proposed imposed heights and controls are generally inconsistent with planning for HCAs, and heritage values. In addition, *Non-refusal policies* mean that enforcing local heritage controls will be impossible.

- There has been no apparent consideration of the Heritage Act, and impacts on State or Aboriginal Heritage items.
- Suggestions that the government could compromise and apply a % of HCA or heritage items to be preserved, undermines the entire principle of genuine Heritage conservation.
- Heritage listings are subject to careful assessment and supported by strategic planning and consultation with the community. Each area of Greater Sydney and NSW contains heritage items that are unique to their area, reflecting the history of an area and contributes to the local character. The proposal will damage not only a link for the living and future generations to our history but the individuality of different suburbs across greater Sydney.

2.5 INFRASTRUCTURE

- The strain of additional development locally and the capacity to cope of existing road networks, waste services, community facilities such as libraries, community health services, sporting facilities and open space have not been considered. The cost, funding and timeframes for supporting services, facilities and infrastructure must be addressed.

At a State level, the requirement and cost for corresponding transport infrastructure, schools, roads, and hospitals are not addressed.

No direction has been provided on how to address any shortfall in funding for all levels of infrastructure.

- Good planning requires a holistic vision that considers local, regional and state infrastructure.
- According to Australian Rainfall & Runoff: A Guide to Flood Estimation 2.2.3. Implications of the Urban Water Balance: Stormwater as a Resource

Urban areas generate substantially greater stormwater runoff and pollutant loads compared to natural landscapes and are degrading our urban waterways and receiving waters. These additional flows substantially increase the discharges and overflows from sewer networks.

In many areas stormwater, sewerage and water pressure are already not coping due to age and capacity of infrastructure, pressure from increased development and population.

As a consequence of development, increased hard surfaces result in increased volumes of water run-off, erosion and pressure on stormwater drainage. As an example, BPN is aware of flooding issues in Keiraville due to this problem. In parts of Ku-ring-gai water pressure is an issue. This becomes more pressing in bushfire areas.

The funding for State Government and Councils to provide adequate infrastructure to satisfy the needs of the growing community has not been assessed or addressed. Increasing developer contributions to contribute to state and local community infrastructure and facilities must be seriously considered. Increasing contributions to similar levels as the ACT provides a good example: 75% of the land value increase from rezoning should be in public hands e.g., 50% to Council and 25% to the State.

2.6 IMPROVED BUILDING STANDARDS NEED TO BE MANDATORY

- **Thermal control:** BPN supports at least 7-star NatHERS (National House Energy Rating Scheme) for thermal performance but in all new residential flat buildings with support for operational sustainability with 100% electricity power in all new buildings including housing. Current proposals are for 5.5. NaTHERS for residential flat buildings less than 6 storeys.

CONCLUSION AND RECOMMENDATION

Housing affordability relies on multiple factors and addressing housing affordability based on housing supply alone will not resolve the issue.

The proposed 'one size fits all' reforms are not based on evidence-based studies and sound planning principles.

The reforms do not satisfy a number of objectives of the *Environmental Planning and Assessment Act 1979*.

The cumulative impacts of these changes are significant on heritage, environment, infrastructure, amenity and liveability.

The proposed impacts will affect all local centres and mixed-use lands and residential lands across NSW.

The plans fail to ensure liveable well-designed environments for people to live in.

Given the significant reforms and major impacts on Greater Sydney and NSW, the SEPPs must be subject to Parliamentary oversight for approval.

Both the TOD and Low-to Mid-rise Housing reforms must be withdrawn and state government must co-operate with councils to deliver orderly and properly planned outcomes suitable to each area.