



**EXTRAORDINARY MEETING
TO BE HELD ON WEDNESDAY, 8 MAY 2024 AT 6:00 PM
LEVEL 3, COUNCIL CHAMBER**

A G E N D A

**** ** * ** ** ***

Request for Extraordinary Meeting of Council

We write to request an Extraordinary Meeting of Council pursuant to Section 366 of the Local Government Act 1993 to consider Council's response to the Transport Oriented Development provisions of the Housing SEPP, which are set to impact Gordon, Killara, Lindfield and Roseville from 13 May 2024.

Requested by:

Councillor Sam Ngai, Mayor
ROSEVILLE WARD

Councillor Barbara Ward
GORDON WARD

Councillor Simon Lennon
GORDON WARD

Councillor Martin Smith
ST IVES WARD

Councillor Kim Wheatley
WAHROONGA WARD

NOTE: For Full Details, See Council's Website –
<https://www.krg.nsw.gov.au> under the link to business papers

The Livestream can be viewed here:
<https://www.krg.nsw.gov.au/Council/Council-meetings/Council-meeting-live-stream>

Disclaimer: All Ku-ring-gai Council Ordinary Meetings of Council are livestreamed for on-demand viewing on the KRG website. Although Council will do its best to ensure the public is excluded from the livestream, Council cannot guarantee a person's image and/or voice won't be broadcast. Accordingly, attendance at Council meetings is considered consent by a person for their image and/or voice to be webcast. Council accepts no liability for any damage that may result from defamatory comments made by persons attending meetings. As per clause 15.21 of Council's Code of Meeting Practice, a person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording or photograph of the proceedings of a meeting of the council or a committee of the council without the prior authorisation of the council.

In accordance with clause 3.23 of the Model Code of Meeting Practice, Councillors are reminded of the oath or affirmation of office made under section 233A of the Act, and of their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

Please refer to Part 4 of Council's Code of Conduct for Pecuniary Interests and Part 5 of Council's Code of Conduct for Non-Pecuniary Interests.

The Oath or Affirmation taken is as below:

Oath:

I *[name of Councillor]* swear that I will undertake the duties of the office of Councillor in the best interests of the people of the Ku-ring-gai Local Government area and the Ku-ring-gai Council, and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgement.

Affirmation:

I *[name of Councillor]* solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the people of the Ku-ring-gai Local Government area and the Ku-ring-gai Council, and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgement.

APOLOGIES

DECLARATIONS OF INTEREST

DOCUMENTS CIRCULATED TO COUNCILLORS

MINUTES FROM THE MAYOR

MM.1 NSW Labor is Building the Plane while Flying It

6

File: S14427

This Mayoral Minute provides an update on local activity regarding the State Labor Government's proposed housing policies, as well as three actions for council to consider. These three actions are not mutually exclusive, and will be voted on in seriatim (i.e., separately).

Transport Oriented Development State Environmental Planning Policy (TOD SEPP)

On 29th April 2024, the State gazetted the '*State Environmental Planning Policy (Housing) Amendment (Transport Oriented Development) 2024*' under the Environmental Planning and Assessment Act 1979.

The changes to the Housing SEPP, compared to what was previously proposed, involved a reduction in floor space ratio from 3:1 to 2.5:1 as well as an increase in heights from 21m to 22-24m. A minimum lot width of 21m was also introduced, though there was still no minimum lot size.

Affordable Housing remained at a 2% minimum in perpetuity, which appears low.

Section 155 of the Housing SEPP also states that height and floor space ratio controls, if complied with, will prevent the consent authority from requiring more onerous standards. Our early legal advice indicates that this will fatally weaken local controls on heritage, setbacks and urban canopy. In particular, I believe the character of existing garden-style heritage conservation areas is at risk and will not survive the uplift in heights and FSR that is supported by the SEPP.

On 30th April 2024, the TOD precinct map layers were published on the NSW Planning Spatial Viewer including layers for Gordon, Killara, Lindfield and Roseville. The maps depict a 400m radius around each train station, with all properties included in the TOD precinct unless they are state or locally listed heritage items. The approach to mapping resulted in peculiarities such as a single property on a street block being left out and heritage items being surrounded by 22m residences.

Meeting with the Minister

On 12th April 2024, the State Government issued a media release claiming that 12 out of 13 councils had been willing to work with them to achieve the Transport Oriented Development Part 2 outcomes, and that the thirteenth was a holdout.

On the same day, Mayor Ngai wrote a letter to the Planning Minister stating that this was simply not the case. Mayor Ngai had requested the first meeting with the Minister and it took over 3 months for the Minister to make time for it to happen. **The Mayor's request for a 12 month deferral for planning was rejected, despite the Minister giving other councils**

similar extensions. A second meeting scheduled for the following week ended up not happening as the Mayor was turned away. Mayor Ngai's letter to the Minister stated that he was still waiting for the second meeting. On 19th April 2024, the Minister's office issued a letter stating that they were open to a second meeting. A meeting was arranged for 2nd May. At this meeting, it was confirmed that:

- If Ku-ring-gai establishes a new Local Environment Plan (LEP) for a TOD precinct that matches or exceeds the NSW Government's policy objectives, the maps will be removed from the Housing SEPP.
 - As part of a revised LEP, they will not accept significant expansion beyond the 400m circle (e.g. 800m or 1,200m) as these will be covered separately by upcoming Low - and Mid-Rise provisions Housing SEPP.
- Similarly, if Ku-ring-gai establishes a new LEP that matches or exceeds the NSW Government's policy objectives of the Low - and Mid-Rise provisions of the Housing SEPP, then the government's changes *might* not apply.
 - The Low - and Mid-Rise Housing SEPP is expected to be gazetted in June or July of this year.
 - A five-year target for each LGA may be provided before 30 June 2024, to align with each's contribution under the National Housing Accord.
 - Though it was implied that longer-term targets may be established, the Minister did not commit to providing these by 30 June 2024.
- Regarding the Housing and Productivity Contributions scheme, there were no firm details other than what is already publicly known.
 - The contributions raised by all Greater Sydney developments will go towards State infrastructure, not local.
 - An Infrastructure Opportunities Plan, despite intentions to be released last year, is still work in progress and no timeframe has been provided for its delivery.
- Regarding public open space, the Mayor emphasised that this cannot be retrofit and the urgency is to procure land right now (especially in Killara and Roseville) before development takes a foothold. He sought additional funding sources to make it happen.
 - The Minister did not commit to any funding sources, other than stating that councils have the opportunity to apply for a TCorp concessional loan facility, similar to what was done for the St Ives Basketball Courts.
 - The Minister also stated that Council may wish to revise its s7.11 and s7.12 contributions plans.
 - The Federal Government's Housing Support Program Stream 2 focuses on infrastructure projects and amenities that support new housing. Applications open in May.
 - The Planning Department staff also emphasised opportunities to encourage private developers to create private open space for communal use. Council could consider developer incentives to promote good design.
- Regarding heritage, the Mayor expressed his view that under section 155 of the Housing SEPP, it would be near difficult for garden-style heritage conservation areas to remain intact when imposing maximum heights and floor space ratios. To this, the Minister disagreed and said that densities can be located behind the original building. The Council staff in attendance did not agree that this was possible.

Community Response

Of the members of the community who are actively engaging councillors, there have been three common themes.

- 1) The majority of residents do not approve of the approach taken by the State Government to deliver more housing in NSW. There are concerns with the one-size-fits-all approach, lack of planning, the need for infrastructure to come before housing, lack of genuine community consultation, traffic, heritage, urban canopy, wildlife, and climate adaptation.
- 2) Some residents frustrated by 1) above have asked if Council will consider taking legal action to prevent this from happening.
- 3) Some residents have also expressed a desire for Council to explore updates to its Local Environment Plan around the four TOD precincts so that a well-planned, community consulted outcome can supersede the current status quo.

As part of a new LEP, Council can also employ measures such as rezoning certain properties to RE1 Public Recreation and set these aside as future spaces for public recreation.

Recommendation:

That Council votes on each of the following in seriatim (i.e. separately).

- A. That Council supports more housing but denounces the lack of planning and one-size-fits-all policies of the State Government.
- B. That Council commence proceedings in the NSW Land and Environment Court concerning the Transport Oriented Development Amendment to the Housing SEPP, to seek declarations as to invalidity and orders restraining any associated breach of law, including the Environmental Planning and Assessment Act 1979.
- C. That Council commences studies around the four Transport Oriented Development precincts of Gordon, Killara, Lindfield and Roseville to explore better resident outcomes than what is currently in place (as of 13 May 2024). The studies, scenario analysis and community engagement should be presented before councillors within nine months for a decision. Such scenarios may include:
 - i) Base Case – Identification of new infrastructure and amenities to support the state-imposed TOD precincts in their current form.
 - ii) Minor Amendment Case – In addition to the Base Case, it will selectively spare key Heritage Conservation Areas as well as improve urban canopy outcomes by shifting dwellings towards key sites in the town centre.
 - iii) More Extensive Case – In addition to the Base Case, a more ambitious effort to save multiple Heritage Conservation Areas as well as improve urban canopy outcomes by shifting dwellings towards non-heritage areas in the town centre.
 - iv) As well as any other scenarios that Council staff choose to identify.

**** ** ***

MAYORAL MINUTE

NSW LABOR IS BUILDING THE PLANE WHILE FLYING IT

This Mayoral Minute provides an update on local activity regarding the State Labor Government's proposed housing policies, as well as three actions for council to consider. These three actions are not mutually exclusive, and will be voted on in seriatim (i.e., separately).

Transport Oriented Development State Environmental Planning Policy (TOD SEPP)

On 29th April 2024, the State gazetted the '*State Environmental Planning Policy (Housing) Amendment (Transport Oriented Development) 2024*' under the Environmental Planning and Assessment Act 1979.

The changes to the Housing SEPP, compared to what was previously proposed, involved a reduction in floor space ratio from 3:1 to 2.5:1 as well as an increase in heights from 21m to 22-24m. A minimum lot width of 21m was also introduced, though there was still no minimum lot size.

Affordable Housing remained at a 2% minimum in perpetuity, which appears low.

Section 155 of the Housing SEPP also states that height and floor space ratio controls, if complied with, will prevent the consent authority from requiring more onerous standards. Our early legal advice indicates that this will fatally weaken local controls on heritage, setbacks and urban canopy. In particular, I believe the character of existing garden-style heritage conservation areas is at risk and will not survive the uplift in heights and FSR that is supported by the SEPP.

On 30th April 2024, the TOD precinct map layers were published on the NSW Planning Spatial Viewer including layers for Gordon, Killara, Lindfield and Roseville. The maps depict a 400m radius around each train station, with all properties included in the TOD precinct unless they are state or locally listed heritage items. The approach to mapping resulted in peculiarities such as a single property on a street block being left out and heritage items being surrounded by 22m residences.

Meeting with the Minister

On 12th April 2024, the State Government issued a media release claiming that 12 out of 13 councils had been willing to work with them to achieve the Transport Oriented Development Part 2 outcomes, and that the thirteenth was a holdout.

On the same day, Mayor Ngai wrote a letter to the Planning Minister stating that this was simply not the case. Mayor Ngai had requested the first meeting with the Minister and it took over 3 months for the Minister to make time for it to happen. **The Mayor's request for a 12 month deferral for planning was rejected, despite the Minister giving other councils similar extensions.** A second meeting scheduled for the following week ended up not happening as the Mayor was turned away. Mayor Ngai's letter to the Minister stated that he was still waiting for the second meeting.

Item MM.1

S14427

On 19th April 2024, the Minister's office issued a letter stating that they were open to a second meeting. A meeting was arranged for 2nd May. At this meeting, it was confirmed that:

- If Ku-ring-gai establishes a new Local Environment Plan (LEP) for a TOD precinct that matches or exceeds the NSW Government's policy objectives, the maps will be removed from the Housing SEPP.
 - As part of a revised LEP, they will not accept significant expansion beyond the 400m circle (e.g. 800m or 1,200m) as these will be covered separately by upcoming Low - and Mid-Rise provisions Housing SEPP.
- Similarly, if Ku-ring-gai establishes a new LEP that matches or exceeds the NSW Government's policy objectives of the Low- and Mid-Rise provisions of the Housing SEPP, then the government's changes *might* not apply.
 - The Low - and Mid-Rise Housing SEPP is expected to be gazetted in June or July of this year.
 - A five-year target for each LGA may be provided before 30 June 2024, to align with each's contribution under the National Housing Accord.
 - Though it was implied that longer-term targets may be established, the Minister did not commit to providing these by 30 June 2024.
- Regarding the Housing and Productivity Contributions scheme, there were no firm details other than what is already publicly known.
 - The contributions raised by all Greater Sydney developments will go towards State infrastructure, not local.
 - An Infrastructure Opportunities Plan, despite intentions to be released last year, is still work in progress and no timeframe has been provided for its delivery.
- Regarding public open space, the Mayor emphasised that this cannot be retrofit and the urgency is to procure land right now (especially in Killara and Roseville) before development takes a foothold. He sought additional funding sources to make it happen.
 - The Minister did not commit to any funding sources, other than stating that councils have the opportunity to apply for a TCorp concessional loan facility, similar to what was done for the St Ives Basketball Courts.
 - The Minister also stated that Council may wish to revise its s7.11 and s7.12 contributions plans.
 - The Federal Government's Housing Support Program Stream 2 focuses on infrastructure projects and amenities that support new housing. Applications open in May.
 - The Planning Department staff also emphasised opportunities to encourage private developers to create private open space for communal use. Council could consider developer incentives to promote good design.
- Regarding heritage, the Mayor expressed his view that under section 155 of the Housing SEPP, it would be near difficult for garden-style heritage conservation areas to remain intact when imposing maximum heights and floor space ratios. To this, the Minister disagreed and said that densities can be located behind the original building. The Council staff in attendance did not agree that this was possible.

Community Response

Of the members of the community who are actively engaging councillors, there have been three common themes.

Item MM.1

S14427

- 1) The majority of residents do not approve of the approach taken by the State Government to deliver more housing in NSW. There are concerns with the one-size-fits-all approach, lack of planning, the need for infrastructure to come before housing, lack of genuine community consultation, traffic, heritage, urban canopy, wildlife, and climate adaptation.
- 2) Some residents frustrated by 1) above have asked if Council will consider taking legal action to prevent this from happening.
- 3) Some residents have also expressed a desire for Council to explore updates to its Local Environment Plan around the four TOD precincts so that a well-planned, community consulted outcome can supersede the current status quo.

As part of a new LEP, Council can also employ measures such as rezoning certain properties to RE1 Public Recreation and set these aside as future spaces for public recreation.

RECOMMENDATION:

That Council votes on each of the following in seriatim (i.e. separately).

- A. That Council supports more housing but denounces the lack of planning and one-size-fits-all policies of the State Government.
- B. That Council commence proceedings in the NSW Land and Environment Court concerning the Transport Oriented Development Amendment to the Housing SEPP, to seek declarations as to invalidity and orders restraining any associated breach of law, including the Environmental Planning and Assessment Act 1979.
- C. That Council commences studies around the four Transport Oriented Development precincts of Gordon, Killara, Lindfield and Roseville to explore better resident outcomes than what is currently in place (as of 13 May 2024). The studies, scenario analysis and community engagement should be presented before councillors within nine months for a decision. Such scenarios may include:
 - i) Base Case – Identification of new infrastructure and amenities to support the state-imposed TOD precincts in their current form.
 - ii) Minor Amendment Case – In addition to the Base Case, it will selectively spare key Heritage Conservation Areas as well as improve urban canopy outcomes by shifting dwellings towards key sites in the town centre.
 - iii) More Extensive Case – In addition to the Base Case, a more ambitious effort to save multiple Heritage Conservation Areas as well as improve urban canopy outcomes by shifting dwellings towards non-heritage areas in the town centre.
 - iv) As well as any other scenarios that Council staff choose to identify.

Councillor Sam Ngai
Mayor