

The General Manger
 Ku-ring-gai Council
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16 April 2025

Dear Mr Marshall,

Re: Public Exhibition of Preferred Scenario

Thank you for the opportunity to provide feedback on the 'preferred scenario' for the Transport Oriented Development (TOD) precincts surrounding Gordon, Killara, Lindfield, and Roseville stations.

Friends of Ku-ring-gai Environment (FOKE) have been strong advocates for the protection of Ku-ring-gai's neighbourhood character, environment, heritage and liveability for the past 30 years. The NSW Government's TOD and Low and Mid-Rise housing policies (LMRH) will have a significant detrimental impact on Ku-ring-gai.

In its 2024 Five Alternate Scenarios public exhibition, Council clearly outlined seven core planning principles to evaluate scenarios based on their ability to preserve the area's heritage character and tree cover. These principles emphasise avoiding environmentally sensitive areas, minimising impacts on tree canopy and heritage items, protecting heritage conservation areas, managing transition impacts and ensuring appropriate building heights while supporting centre revitalisation. However, council has shifted from scenario 3b it identified as meeting these principles, to a new preferred scenario that fails to uphold them. By doing so, council has undermined its own planning principles, adopting a final scenario that does not align with all its stated principles.

FOKE is writing to express serious concerns regarding the Transport Oriented Development (TOD) preferred scenario, as exhibited for public consultation until 22 April 2025. While FOKE supports efforts to address state housing targets, the absence of critical supporting studies - traffic, parking, infrastructure (e.g., water, sewerage, utilities), and environmental assessments - combined with the scenario's rushed and ill-considered impacts on adjacent LMRH, heritage conservation areas and isolated heritage items, renders it premature and potentially unlawful. This submission outlines these deficiencies, supported by legal precedents, and urges the Council to defer adoption until comprehensive studies and impact assessments are completed and publicly reviewed.

1. Absence of Traffic, Parking, and Infrastructure Studies

The preferred TOD scenario proposes increased housing density in Gordon, Killara, Lindfield, and Roseville, yet lacks studies on traffic, parking, and broader infrastructure capacity (e.g., water, sewerage, electricity). This omission undermines the scenario's feasibility and risks exacerbating congestion, parking shortages, and utility failures, particularly around transport hubs.

Under s 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), decision-makers must consider environmental, social, and economic impacts, including infrastructure capacity. The NSW Court of Appeal in *Mison v Randwick Municipal Council [1991] NSWCA 99* held that failure to assess traffic and

parking impacts invalidates planning decisions, a principle extending to broader infrastructure. Similarly, *Weal v Bathurst City Council* [2000] NSWCA 88 overturned a consent for inadequate traffic analysis, emphasising that high-impact proposals like the TOD require comprehensive evidence.

Without these studies, the Council cannot ensure sustainable growth or mitigate adverse impacts. We urge the Council to commission and publish traffic, parking, and infrastructure studies before finalising the scenario.

2. Lack of Environmental Studies

The absence of environmental impact studies fails to address the effects on Ku-ring-gai's biodiversity, tree canopy, and heritage landscapes. The Council's commitment to preserving environmental assets, as seen in the 2002 Residential Development Strategy prepared with four baseline studies, is undermined without evidence that density increases will not degrade these values.

The Land and Environment Court in *Aldous v Greater Taree City Council* [2009] NSWLEC 17 refused a development application for failing to prove infrastructure and environmental capacity, a principle applicable here. The scenario's lack of studies risks scrutiny, particularly given Ku-ring-gai's defence of its assets in *Ku-ring-gai Council v Minister for Planning* [2008] NSWLEC 174. FOKE requests comprehensive environmental studies to ensure compliance with the EP&A Act.

3. Impacts on Adjacent Low and Mid-Rise Housing (LMRH) and Heritage Conservation Areas (HCAs) and Heritage Items.

The preferred scenario's proposed density increases, without supporting studies, threaten adjacent Low and Mid-Rise housing areas, heritage conservation areas and isolated heritage items, negatively impacting future standards of living and resale values of homes and land. The rushed and ill-considered approach that council has taken fails to assess how taller and denser buildings, increased traffic, and strained infrastructure will affect these areas', heritage items, neighbourhood character, amenity, and economic value.

LMRH like the TOD areas, are valued for their leafy, low-density character, face risks of overshadowing, privacy loss, and congestion, eroding liveability. Heritage conservation areas, central to Ku-ring-gai's identity, are vulnerable to visual and environmental degradation from nearby high-density development, diminishing their cultural and aesthetic appeal. These impacts could deter buyers, lowering resale values, as property markets often penalise proximity to poorly planned developments. The absence of studies to quantify these effects, e.g., on traffic flow, parking availability, or heritage compatibility - leaves residents unable to gauge the scenario's toll on their quality of life and financial security.

Of particular concern is the impact on isolated heritage items, individual heritage listed properties that are scattered across TOD and LMRH precincts. Without studies assessing their integration into high-density surroundings, these properties risk being marooned and amidst incompatible developments, such as tall denser buildings that clash with their marketability. Heritage listed properties often command high values due to their rarity and aesthetic, but if unable to be sensitively incorporated into TOD plans, their property values could plummet. For example, a heritage home dwarfed by apartments may lose its unique setting, deterring buyers and lowering resale potential. The absence of specific impact assessments for these items leaves owners vulnerable to economic loss and diminished living standards.

The EP&A Act requires consideration of social and economic impacts, including amenity and property values. *Ku-ring-gai v Minister* highlighted the need to protect local character, a precedent warning against hasty planning. Without impact assessments, the scenario risks irreversible harm to these areas, undermining community trust and economic stability.

4. Procedural Fairness and Community Engagement

The lack of traffic, parking, infrastructure, environmental, and adjacent area impact studies denies residents a meaningful opportunity to assess the scenario. The NSW Court of Appeal in *Parramatta City Council v Hale* [1982] NSWCA 37 ruled that procedural fairness requires sufficient information for community input. Without these studies, residents cannot evaluate congestion, utility capacity, environmental loss, or impacts on liveability and property values, rendering consultation deficient.

The Council's ongoing traffic studies, noted on its engagement portal, are incomplete, and broader impact assessments are absent. FOKE urges the Council to extend consultation and release all planning and assessment studies for review before adoption.

5. Legal and Community Risks

Advancing the preferred scenario without these studies risks legal challenge and distrust. Section 4.15 of the EP&A Act mandates consideration of all relevant matters, including infrastructure, heritage, environmental, and social impacts. Failure to do so could invite judicial review, as in *Ku-ring-gai v Minister*. FOKE has continually echoed community concerns about planning deficits, risking alienation of residents valuing Ku-ring-gai's liveability, environment and heritage.

Recommendations

FOKE respectfully requests that Council:

1. **Commission and publish** traffic, parking, infrastructure, environmental, and adjacent area impact studies and isolated heritage items before finalising the TOD preferred scenario.
2. **Extend the consultation period** to allow review of these studies.
3. **Revise the scenario** to reflect findings, ensuring infrastructure, environmental, heritage and amenity capacity align with density.
4. **Engage transparently**, addressing mediation outcomes with the NSW Government and Ku-ring-gai's strong legacy of defending local interests.

Conclusion

The preferred TOD preferred scenario cannot proceed lawfully or equitably without traffic, parking, infrastructure, environmental, and impact studies for adjacent areas and heritage items. Precedents like *Mison*, *Weal*, *Aldous*, *Hale*, and *Ku-ring-gai v Minister* underscore the need for these assessments to ensure compliance with the EP&A Act and fairness. We urge the Council to prioritise evidence-based planning to protect standards of living, heritage significance, property values, and community trust.

Thank you for considering FOKE's submission. It is to be hoped that Council will take on board our concerns and respond to the recommendations.

Yours sincerely,

Kathy Cowley

Kathy Cowley

PRESIDENT

cc Mayor and councillors

cc Matt Cross MP Member for Davidson

cc The Hon Alister Henskens SC MP Member for Wahroonga

cc The Hon Paul Scully MP Minister for Planning and Infrastructure

cc The Hon Scott Farlow MP Shadow Minister for Planning