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16 February 2023

Ms Kiersten Fishburn  
Secretary  
NSW Department of Planning, Housing and Infrastructure  
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Dear Ms Fishburn,

The Property Council of Australia welcomes the opportunity to provide a submission to the NSW Department of Planning, Housing and Infrastructure (Department) on the Transit Oriented Development (TOD) Program.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive, sustainable, and safe places.

As one of the principal advocates for this major urban planning reform, the Property Council is passionate about ensuring the TOD Program is well-calibrated to deliver on its objective to create more well-located homes close to transport, jobs and services.

As we have previously articulated, the TOD Program represents a once in a generation opportunity to reshape the urban pattern of development in metropolitan Sydney and the regions. We believe the design of the program, including the supporting assessment framework, needs to be adjusted to ensure we can maximise the supply of housing over the National Housing Accord period to 2029.

The Property Council has consulted widely with our members to develop the key recommendations in this submission, which are collated below for ease of reference:

1. Publish a strategic framework for industry and community governing the TOD Program.
2. Establish criteria that enable Tier Two sites to be graduated to a Tier One Accelerated Precinct or facilitate progression of proponent-led sites where strategic merit can be demonstrated.
3. Set minimum housing targets covering designated precincts within the TOD Program.
4. Commit to undertake an accelerated master planning process targeting no more than three-to-four-months for precincts that have not previously undergone strategic planning studies.

5. Commit to only applying the mandatory affordable and social housing provisions where significant value is being created by dramatically increasing the development potential of the land through rezoning.
6. Publish the development feasibility assessment which is informing mandatory affordable and social housing provisions within the Tier One Accelerated Precincts.
7. Expand the site area under the Tier Two program to an 800m radius.
8. Increase minimum buildings heights to 12 storeys under the Tier Two program for FSR 3:1 within 800m of a station.
9. Where the infill bonus is applied within a Tier Two TOD precinct, waive the two per cent in-perpetuity affordability requirement.
10. Increase and expand the \$520 million funding facility to cover critical local infrastructure upgrades required under the Tier Two program.
11. Use one consistent Regional Planning Panel across the six cities region to help arbitrate projects which are not deemed State Significant Development (SSD) under the Tier Two TOD Program.
12. Develop a Practice Note and accompanying Ministerial Guideline to provide guidance to council assessors and proponents about how potential heritage, development conflicts and built form transition to adjoining lower density neighbourhoods should be resolved.
13. Implement efficiencies in the SSD process to target a six-month assessment timeframe (or 40 days from lodgement of Response to Submissions).
14. Scrap site specific design competitions for high-rise developments in Tier One and Tier Two precincts under the TOD Program.
15. Increase the number of staff in assessment roles within the Department to manage the influx of additional SSD applications, aligned to National Housing Accord period.
16. Establish a panel of planning consultants that the Department (or councils) could use as a surge assessment resource under the TOD program.
17. Create new merit-based criteria for objections to the Independent Planning Commission (IPC).
18. Leverage the Urban Development Program model to prioritise future TOD precincts.
19. Release the next tranche of sites to be progressed under the TOD Program in Q2 2024.

Further detail on these recommendations has been included in each subsection of this submission.

### **Strategic TOD Framework**

International experience demonstrates TOD optimises the use of land and infrastructure, avoids urban sprawl, preserves open spaces, protects natural resources, and reduces the need for infrastructure expansion. By promoting high-density development around existing transport nodes, TOD has the potential to deliver network-wide efficiencies, improve agglomeration economics, transform accessibility and liveability, and ultimately provide better place-based outcomes for communities.

While these benefits are well understood by industry, the community will remain resistant to urban transformation unless the NSW Government is able to set and promote a clear vision and principles that govern appropriate density and placemaking under the state's TOD program.

We understand the Department undertook analysis of 305 Sydney Train, Sydney Metro, and Intercity stations within the Six Cities Region to identify the key locations under the TOD Program that have enabling infrastructure capacity to support additional housing. While there are broad objectives for the Tier One Accelerated Precincts, there is no strategic framework or governing principles for the TOD Program. As such, we recommend that the Department develop a vision, framework and set of principles for inclusion in the TOD Program and accompanying State Environment Planning Policy (SEPP) to assist in communicating the public benefits of TOD.

To support this framework, the Property Council also recommends that the Department establish criteria that enable Tier Two sites to be graduated to a Tier One Accelerated Precinct or facilitate

progression of proponent-led sites where strategic merit can be demonstrated. The Urban Development Program (UDP) criteria, site compatibility statements and the out of sequence checklist established by the Parramatta Road Corridor Urban Transformation Strategy are examples of potentially suitable models which require critical matters such as context, environmental impacts, stakeholder support and infrastructure staging and sequencing to be demonstrated. The introduction of such criteria could also transfer a proportion of the costs and resourcing imposts of progressing precincts to the private sector, thereby freeing up the Department and Councils to use their limited resources more efficiently. The Property Council would welcome the opportunity to work with the Department on the development of the criteria.

While we note that the rezoning boundary for the identified TOD precincts will be adjusted to reach the required density in a given area, there is potential for land use conflict. The Property Council envisages that these conflicts may arise in cases where new residential development is adjacent to existing 24-hour commercial or industrial buildings in precincts to be accelerated or rezoned under the TOD Program. These conflicts will need to be carefully managed if the state is to retain and expand employment lands into the future.

### **TOD Housing Targets**

To support the TOD Program, the NSW Government should also consider setting minimum housing targets against designated transport precincts to take pressure out of the greenfield development market and rebalance population growth to established infill sites.

These targets should form part of the Six Cities Region Plan and accompanying City Plans and inform the development of a broader transport precinct pipeline. This pipeline should include future transport hubs around new Sydney Metro stations currently in the planning phase, including light rail and rapid bus transport hubs.

### **Tier One – Accelerated Precincts**

The Property Council supports the division of the TOD Program into two tiers, with a focus on accelerating planning for key precincts under the Tier One Program. The Department should seek to undertake an accelerated master planning process that is fit for purpose and recognises the statutory rezoning process provides mechanisms to undertake consultation and technical investigations.

The accelerated master planning process should focus on vision, strategic objectives, opportunities and constraints, and options to articulate the 'big picture' and establish a framework to shape growth and change. Adopting this approach could ensure the master planning process targets a three-to-four-month program for precincts that have not previously undergone strategic planning studies.

Where master planning has already been conducted, a streamlined rezoning process should be delivered with a focus on delivering maximum uplift. The rezoning process needs to recognise that extensive investigations, and engagement activities have occurred for these precincts, and consequently there is the opportunity to finalise a rezoning within six-nine months, rather than revisiting matters.

While the Property Council supports the provision of affordable housing, it is critical that the floor space ratio and height uplift generated under the Tier One program is sufficient to offset the up to 15 per cent mandatory affordable and social housing provisions which will apply to the precincts. Within the 1200m rezoning, the NSW Government must ensure these provisions only apply in areas where significant value is being created by dramatically increasing the development potential of the land through rezoning.

To enhance industry confidence, the Property Council requests that the Department publish the development feasibility assessment it has undertaken to inform the mandatory affordable and

social provision within the Tier One Accelerated Precincts. Further clarity is also required regarding the stacking of local affordable housing contributions, including how the affordable and social housing requirement within Tier One Precincts will impact development feasibility when stacked with current or future local council affordable housing schemes.

The Property Council is also concerned that development approvals under the TOD accelerated precincts program will be time-limited for two years as part of a 'use it or lose it' approach. While we support the government's intention to accelerate construction of new homes over the period of the National Housing Accord, the two-year time limit needs to be balanced against prevailing market conditions which are constraining developers' ability to commence construction. Construction sector insolvencies, elevated capital, labour and material costs will all weigh on a developer's ability to meet imposed commencement timeframes.

### **Tier Two – Rezonings**

The Property Council supports the NSW Government's commitment to undertake 'snap rezonings' of 31 locations across the Sydney, Hunter, Central Coast and Illawarra regions to make residential flat buildings permissible within 400m of train stations in the selected locations. However, we remain concerned that the Tier Two program, as presently configured, will only deliver 11,400 homes over the Housing Accord period to 2029.

To take advantage of this generational opportunity and fully leverage the state's catalytic investment in transport infrastructure across Greater Sydney and the regions, we recommend the NSW Government amend the scope of the program to maximise its benefit. The Property Council recommends the site area under the Tier two program be expanded to 800m radius. In addition, we recommend maximum building heights permitted under the program are increased in consultation with industry.

The Property Council is concerned the Floor Space Ratio (FSR) 3:1 and 21m height controls are not calibrated and may result in poor amenity outcomes and longer assessment times because the permissible height and building envelopes cannot accommodate the FSR. The misalignment between heights and FSR controls also means that, in many locations, development will not be commercially viable and will be unable to proceed. This means that project take up will not occur by landowners and the industry, and the projected supply of dwellings will not be achieved as the FSR will always fall short.

As such, we recommend the NSW Government follow their own Apartment Design Guidelines to improve feasibility and broader uptake of the program. At a minimum, the Department should pursue heights of 12 storeys instead of 6 storeys for FSR 3:1 within 800m of a station. Alternatively, the Property Council would be pleased to offer the assistance of a select group of our members to the Department to independently review and validate feasibility assumptions.

The Property Council is also concerned that the application of a two per cent mandatory in-perpetuity affordable housing requirement will create complications for industry when proponents seek to apply the infill affordable housing bonus provisions, which only mandates a 15-year term. Furthermore, the layering of contribution charges, particularly ad hoc affordable housing charges like this mandate, which don't seek to offset a development-contingent cost, represent a growing barrier to industry investment in housing. This requirement will detract developers and landowners from pursuing developments and accordingly, we recommend that where the infill bonus is applied within a Tier Two TOD precinct, the two per cent in-perpetuity requirement be waived.

The intensification of land use across the 31 Tier Two sites will necessitate supporting infrastructure upgrades, including investment in local road, active transport links and open space. While we welcome the \$520 million allocation to provide community infrastructure, this funding is ring-fenced for the eight precincts identified under the Tier One program. As such, the Property Council recommends the \$520 million funding allocation be increased and expanded to cover critical local infrastructure upgrades required under the Tier Two Program.

While some councils are supportive of the state's housing supply and affordability agenda, there is a high risk that opposing councils may seek to use interim heritage orders and other planning means to prevent residential development under the TOD program for projects not deemed SSD.

As such, the Property Council recommends that one consistent Regional Planning Panel be used across the six cities region to help arbitrate projects which are opposed by councils on various planning grounds. This option would provide a credible and independent resolution mechanism that industry, council and the community could have faith in.

### Heritage Conservation Areas

The Property Council understands the new planning controls will apply in heritage conservation areas however a merit-based assessment will also continue to apply to developments in these locations. The Property Council recommends a Practice Note and accompanying Ministerial Direction be developed to provide guidance to councils and proponents about how potential heritage and development conflicts should be resolved.

A Practice Note and accompanying Ministerial Direction should include a specific and clear objective outlining the Government's policy intent to realise more market housing. This should provide clear guidance to the consent authority that delivery of new housing is the paramount objective of the policy and that a hierarchy exists when councils undertake merit-based assessments of heritage and other impacts. The establishment of one consistent and appropriately briefed Regional Planning Panel could also offer an independent mechanism to resolve disputes between council and developers over heritage concerns.

### SSDA Improvements

The implementation of the TOD Program will also require important accompanying changes to the SSD Assessment process, alongside additional assessment resources, to ensure the planning system can respond effectively and efficiently to the new wave of development applications to be initiated under these programs.

SSD processes in NSW are lengthy compared with other states and territories. The Property Council recommends efficiencies in the process be implemented to target a six-month assessment timeframe (or 40 days from lodgement of Response to Submissions). Significant time is currently spent in the pre-lodgement phase, as well as processes such as consistency reviews and agency referrals (all of which do not contribute to the target and published timeframes).

While the pre-lodgement phase is largely applicant dependent, the NSW Government can also target improvements in the pre-lodgement Design Review and Secretary's Environment Assessment Requirements (SEARs) process to accelerate planning approval timeframes. The Property Council has included a table of recommended changes to streamline the SSD Assessment process below for ease:

Pre-Lodgement Phase	Comments
<p><b>SEARs</b></p> <ul style="list-style-type: none"> <li>• Site specific and project specific SEARs to be issued within <b>seven days</b>.</li> <li>• Discretion to be used for SEARs content (i.e. template SEARs are <b>maximum</b> requirements).</li> <li>• Discretion to be used with regard to referral to agencies/Departments i.e. where Detailed DAs follow a Concept</li> </ul>	<ul style="list-style-type: none"> <li>• Minimises pre-lodgement phase.</li> <li>• Streamlines Environmental Impact Statements (EIS).</li> <li>• Allows for tailored SEARs reflective of project specifics.</li> <li>• For example, Aboriginal Cultural Heritage Assessment Report (ACHAR), Biodiversity Development Assessment Report (BDAR) and Social Impact Assessments are costly and timely and are not relevant for most infill</li> </ul>

DA (significant assessment on a precinct scale has been undertaken).	housing developments. These are not required for local and regional DAs for the same land use, so it does not make sense they are required for SSDAs.
<b>Fees</b> <ul style="list-style-type: none"><li>A fee estimate can be automatically generated from the portal.</li></ul>	<ul style="list-style-type: none"><li>Enables payment approvals to be place so that when an invoice is received after lodgement, it can be paid without delay.</li></ul>
<b>Design Excellence</b> <ul style="list-style-type: none"><li>Design Excellence competitions to be scrapped across the TODs as per recommendation above.</li><li>Maximum 1 x Panel meeting pre-lodgement and 1 x Panel meeting post-exhibition.</li><li>DRP not required where detailed Design Guidelines are in place.</li><li>DRP meetings to have a maximum wait of 6 weeks.</li><li>The new CIV thresholds for DRPs should also apply to Concept Plans.</li></ul>	<ul style="list-style-type: none"><li>Specific sites demand tailored design excellence processes.</li><li>DRPs can be more nuanced at times.</li><li>Detailed Design Guidelines do not allow for flexibility, therefore competitions are more façade focused/break the rules where there is no appetite for variation.</li><li>Streamlines pre-lodgement phase and increases certainty of outcomes.</li><li>Removal of Design Competitions can in many cases enable moving straight to a Detailed DA (concept not required).</li></ul>
<b>Establish a process of ACHAR exemptions, similar to the process set up for BDAR</b>	<ul style="list-style-type: none"><li>The process needs to recognise that highly urbanised sites that have been subject to significant (and sometimes multiple) redevelopment are unlikely to have archaeological value.</li><li>Requiring a 4+month ACHAR process in these circumstances is futile.</li><li>An ACHAR exemption/waiver process should be established that requires a desktop analysis of indigenous heritage at a minimum and sign off by the Planning Secretary's delegate (similar to BDAR).</li></ul>
<b>EIS Preparation</b>	<ul style="list-style-type: none"><li>Streamlined EIS Structures with a 'standard' assessment approach (i.e. does not have significant impacts on a community like a mine or ports).</li></ul>
<b>Lodgement and Assessment Phase</b>	
<b>Consistency Review</b> <ul style="list-style-type: none"><li>Consistency Review step removed for REAP certified applications.</li><li>Consistency review should be just that – a check against the SEARs not a merit assessment.</li></ul>	<ul style="list-style-type: none"><li>The REAP scheme requires certification, therefore there should be a level of trust of the quality of information.</li><li>Streamlines lodgement – saving currently unaccounted for time.</li></ul>
<b>Referrals and Exhibition</b> <ul style="list-style-type: none"><li>SSDAs should not be sent to Agencies for review as part of a consistency check.</li><li>Review of referral agencies/Departments to determine whether relevant (i.e. no referral if not necessary), with the PDU to be utilised to facilitate.</li></ul>	<ul style="list-style-type: none"><li>Government agencies/Departments are aware of the timeframes and can work to deadlines.</li><li>Eliminates submitters who deliberately seek to delay assessment (i.e. no submissions outside exhibition period).</li><li>Centralised referral portal (similar to Queensland system).</li><li>Rather than waiting a week after the referral/exhibition is complete, applicants can commence the preparation of a Response to Submissions (RTS) early.</li></ul>

<ul style="list-style-type: none"> <li>• Referrals to be sent and exhibition to commence within <b>seven days</b> of lodgement.</li> <li>• No additional time allowed for responses from referral agencies/Departments and or Submitters (deadlines enforced).</li> <li>• Deemed 'no comment' from an agency/Department if a response is not received within stipulated timeframe.</li> <li>• Applicant can receive live receipt of responses and submissions through the Portal.</li> <li>• Extended exhibition/advertising over Christmas can commence up to mid-December but should then be extended over the Christmas period rather than the current system where there is a complete halt on advertising from 17 November to 8 January.</li> <li>• No extensions of exhibition/advertising over public holidays.</li> </ul>	<ul style="list-style-type: none"> <li>• Given recent advancements in technology, advertising and exhibition should not be extended if it falls over a public holiday (apart from Christmas).</li> </ul>
<p><b>Response to Submissions</b></p> <ul style="list-style-type: none"> <li>• Applicant to prepare one RTS and DPE to proceed without referring the RTS back to the Council/referral agencies/Departments.</li> </ul>	<ul style="list-style-type: none"> <li>• Streamlines assessment and avoids continuous back-and-forth.</li> </ul>
<p><b>Conditions of Consent</b></p> <ul style="list-style-type: none"> <li>• DPE to provide draft conditions of approval within <b>40</b> days of receipt of RTS</li> <li>• DPE should also seek feedback on standard conditions for SSDAs and then publish these conditions on the SSDA planning portal.</li> </ul>	<ul style="list-style-type: none"> <li>• Sets clear deadline, assisted by no extension to agency/Department/Council comments.</li> </ul>
<b>Determination</b>	
<ul style="list-style-type: none"> <li>• Remove the current step of notifying the draft determination on the website for seven days.</li> </ul>	<ul style="list-style-type: none"> <li>• Streamlines determination.</li> </ul>
<ul style="list-style-type: none"> <li>• Streamline delegations such that approvals are issued immediately.</li> </ul>	<ul style="list-style-type: none"> <li>• Avoids layered review and reporting internally at the Department.</li> <li>• Streamlines assessment and empowers Department staff.</li> </ul>

In addition to the above, the Property Council recommends the decision to scrap site specific design competitions for developments around key transport hubs be applied to both Tier One and Tier Two precincts under the TOD Program. Requiring developers of high-rise to select architects from a pre-approved list supplied by the NSW Government Architect will significantly reduce assessment timeframes while maintaining a focus on design excellence.

Alongside these changes, the Property Council recommends the NSW Government increase the number of staff in assessment roles within the Department to manage the influx of additional SSD applications. The funding should be aligned to National Housing Accord period to 2029 and be attached to discrete planning programs under the state's Housing Reform Package, including the TOD Program. This approach will ensure the Department has the resources it needs to deliver on the potential of this landmark reforms.

To complement this approach, the NSW Government should establish a panel of planning consultants that the Department (or councils) could use as a surge assessment resource. It is critical that these efficiency and resourcing improvements are delivered through the 2024-25 NSW Budget to assist the state in meeting its National Housing Accord targets.

### **Independent Planning Commission**

Under the current SEPP (Planning Systems)(Section 2.7), any proposals which a Council objects to would be referred to Independent Planning Commission (IPC) for determination. A simple objection to an SSD proposal under the affordable housing SSD pathway will require the Commission to automatically become the determining authority. There is a risk that the TOD Program will be undermined unless changes to the IPC delegation are reviewed. While we acknowledge that changes have been made to increase the number of unique community objections, council objection as a trigger for IPC review remains an ongoing issue.

Without a change to the delegation, a strategic misalignment between the NSW Government's broad objectives for housing supply and an efficient planning system and Council's narrower focus on local planning issues will emerge. There is also real potential for councils to use IPC objections as a political tool against the NSW Government. Unless changes to the IPCs objection threshold are made, a significant backlog may be generated under the TOD Program.

To resolve this issue, it is recommended the NSW Government create new merit-based criteria for objections to the IPC. This change could also have much broader benefit to the efficiency of the planning system. The Property Council is eager to work constructively with the Department on the development of new criteria that could apply to objections.

### **Future TOD Pipeline**

The NSW Government should provide greater clarity over future sites under the TOD Program to allow industry to better orientate its capital, labour and planning to the forward in-fill residential pipeline.

To ensure robust and evidence-based prioritisation of future TOD precincts, the Property Council recommends the NSW Government leverage the UDP model. As the Department knows, the UDP aims to support the delivery of infrastructure and new development, by improving the coordination of the various stakeholders responsible for development and infrastructure delivery, and actively managing a pipeline of future development.

UDPs are already established in NSW with an expansion of the program currently underway to lead precinct planning and development and serve as a governance framework to support the prioritisation of infrastructure funding generated through the Housing and Productivity Contributions scheme. The Western Parkland City UDP Pilot has developed a robust assessment criterion for prioritising precincts within the city region which could be applied to future sites under the TOD Program covering:

- Strategic alignment
- Land use and infrastructure planning status
- Economic efficiency
- Development readiness



- Community and environmental outcomes, and
- Risk and constraints.

The above priority assessment criteria should be used across other UDPs to improve the coordination and integration of land use, infrastructure, development planning, investment, and sequencing and help prioritise future TOD sites, encompassing all transport forms, including Sydney Metro, heavy rail, light rail and rapid bus interchanges.

The adoption of these criteria would improve transparency and provide the Department with an opportunity to work collaboratively with councils and local communities to send an early signal on where and when growth is expected to occur. The Property Council understands the review of the Region and City Plans is focussing on providing more guidance on planning for short, medium and long-term growth. The UDP priority assessment criteria strongly align with the staging and sequencing framework anticipated in the next iteration of the Region and City Plans and as such offers a welcome TOD prioritisation model.

While the Property Council supports using the UDP as a prioritisation model, it is critical their establishment across the six cities region proceed at pace to limit protracted strategic planning delays and ensure the NSW Government can meet its National Housing Accord commitments. As such, the Property Council recommends that the NSW Government release the next tranche of sites to be progressed under the TOD Program in Q2 2024.

We note that no regional sites were identified as Tier One Accelerated Precincts, even though significant strategic planning work has been undertaken across many critical precincts in both the Hunter and Illawarra regions. The Property Council and our regional chapters in both areas welcome the opportunity to work with the Department to help inform the prioritisation process for future tranches of the TOD Program to ensure all sites of strategic merit can be progressed in a timely manner.

### **Conclusion**

The Property Council would like to thank the Department for their ongoing engagement with industry on this landmark urban planning reform. If you have any questions about this submission, please contact NSW Policy Manger, Michael Player at [mplayer@propertycouncil.com.au](mailto:mplayer@propertycouncil.com.au).

Yours sincerely,



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