



**EXTRAORDINARY MEETING
TO BE HELD ON THURSDAY, 22 MAY 2025 AT 7:30 PM
LEVEL 3, COUNCIL CHAMBER**

L A T E A G E N D A

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NOTE: For Full Details, See Council's Website –
www.kmc.nsw.gov.au under the link to business papers

GB.2 **SSD and local development applications in the TOD - change to savings provisions**

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File: S14846-2

To advise Council of a change of position by the NSW Government on the savings provisions for State Significant Development (SSD) applications in the TOD.

Recommendation:

That Council defer consideration of the draft amendments to KLEP 2015, in anticipation of an Extraordinary Meeting of Council being held closer to 13 June 2025, being the date after which SSD applications and local development applications will not be accepted under the TOD planning controls.

SSD AND LOCAL DEVELOPMENT APPLICATIONS IN THE TOD - CHANGE TO SAVINGS PROVISIONS

EXECUTIVE SUMMARY

PURPOSE OF REPORT:

To advise Council of a change of position by the NSW Government on the savings provisions for State Significant Development (SSD) applications in the TOD.

BACKGROUND:

Previously the Department of Planning, Housing and Infrastructure (DPHI) had advised that SSD applications and local development applications would be saved up until Council formally submits an alternate scheme to the Department (which could be 22/23 May 2025 if adopted by Council at the Extraordinary Meeting on 22 May). Additionally, SSD applications would only be saved once they had responded to Secretary's Environmental Assessment Requirements (SEARs) with an environmental impact statement (EIS) and the application considered 'lodged'.

COMMENTS:

On 17 May 2025 DPHI advised that SSD applications and local development applications will be saved up until 13 June 2025 and that SSD applications only have to have been issued with SEARs.

The changes are potentially significant as not only do applicants have another 3 weeks to submit applications, the time required to obtain SEARs is much less than would be required to respond to SEARs with an environmental impact statement (EIS).

RECOMMENDATION:

(Refer to the full Recommendation at the end of this report)

That Council defer consideration of the draft amendments to KLEP 2015, in anticipation of an Extraordinary Meeting of Council being held closer to 13 June 2025, being the date after which SSD applications and local development applications will not be accepted under the TOD planning controls.

PURPOSE OF REPORT

To advise Council of a change of position by the NSW Government on the savings provisions for State Significant Development (SSD) applications in the TOD.

BACKGROUND

Previously the Department of Planning, Housing and Infrastructure (DPHI) had advised that SSD applications and local development applications would be saved up until Council formally submits an alternate scheme to the Department (which could be 22/23 May 2025 if adopted by Council at the Extraordinary Meeting on 22 May). Additionally, SSD applications would only be saved once they had responded to Secretary's Environmental Assessment Requirements (SEARs) and the application considered 'lodged'.

On 15 April 2025 DPHI advised Council as follows:

- *The TOD SEPP planning controls currently apply to TOD precincts within the Ku-ring-gai LGA. Applications can be lodged now for proposed development within the TOD precincts.*
- *Once council submits an alternative scheme to the Department, Government will look to prevent the lodgement of further development applications until such time as an alternative scheme is finalised.*
- *This is to reduce the risk of proposed development undermining the alternative scheme.*
- *Government intends that all development applications (including State Significant development applications) that are **lodged** but not determined prior to the submission of an alternative scheme, will be assessed and determined in accordance with the controls that applied when the application was lodged.*
- *Secretary's Environmental Assessment Requirements that have been issued but not responded to prior to the submission of an alternative scheme will not be saved.*

COMMENTS

DPHI has now advised that SSD applications and local development applications will be saved up until 13 June 2025 and the SSD applications only have to have been issued with SEARs. They no longer need to have responded to SEARs with an EIS to be saved.

On 17 May 2025 DPHI advised Council as follows:

Following correspondence issued on 15 April 2025 by Monica Gibson, Deputy Secretary, DPHI to Andrew Watson relating to planning controls in TOD precincts within the Ku-ring-gai local government area, the Department wishes to communicate a change of position on the proposed savings provision, having regard to feedback received and further consideration.

This new position is:

- *Upon Ku-ring-gai Council formally submitting to the Department an alternate scheme that seeks to replace the existing TOD planning controls, steps will be taken to disapply those existing controls after Friday 13 June 2025. Applicants will still be able to lodge SSD applications and local DAs thereafter but the TOD planning controls will no longer have application.*

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- *As part of that process and subject to any final Ministerial approval, the Department is proposing to save all state significant development applications with valid SEARs and all local DAs lodged but not yet determined (including any local DAs subject of an appeal to the Land and Environment Court) until Friday 13 June 2025.*

The Department has been continuing to work with Ku-ring-gai Council on an alternate scheme for consideration and assessment by the Minister for Planning and Public Spaces, with an aim to implement it within three months of formally receiving Council's alternate scheme.

The Department will alert applicants of this new position today. I appreciate how you and your team have worked with the Department officers to date.

The savings provision will apply to all SSDAs with valid SEARs issued. If an applicant does not submit an Environmental Impact Statement within two years of SEARs being issued, they may expire. The applicant is able to ask the Department for an extension.

DPHI announce the changed position without any prior notice. The changes are potentially significant as not only do applicants have another 3 weeks to submit applications, the time required to obtain SEARs is much less than would be required to respond to SEARs with an environmental impact statement (EIS) and 'lodge' the SSDA. There are currently ten SSDs within Council's TOD planning area listed on the DPHI planning portal that only have SEARs (preparing the EIS) so these would now automatically be saved. A further 9 TOD SSDs are currently on exhibition (EIS prepared and submitted). It is unknown how many additional applications may be submitted by 13 June, however DPHI have advised that they are not aware of any being prepared for submission at this point in time.

The impact of additional SSD applications and local development applications under the TOD planning controls is discussed on pages 22-24 of GB.1 on this EMC agenda. As outlined, the potential dwelling yields for the sites subject to SSDAs have been calculated based on the underlying TOD controls i.e. FSR of 2.5:1 (without bonus provisions) and assumed apartment sizes of 90sqm. Based on these assumptions, the current SSDA sites are likely to add 1,569 dwellings over and above the dwelling capacity of Council's alternate TOD Scenario. Of these 1,569 dwellings, 580 dwellings are from the sites where the SSDs are lodged and on exhibition. The remaining approximate 989 arise from SSD proposals that only have SEARs (preparing the EIS).

Council officers met with representatives of DPHI on 19 May 2025 to discuss the changes. DPHI agreed that Council could defer its decision about whether to adopt its alternate housing scenario and formally submit it until closer to the 13 June cut-off date. This would allow Council the benefit of knowing how many additional SSD applications and local development applications would be saved, and the impact on the alternate scheme.

On this basis, it is recommended that Council defer consideration of the alternate housing scheme.

INTEGRATED PLANNING AND REPORTING

Theme – Places, Spaces and Infrastructure

Community Strategic Plan Long Term Objective

P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai.

Delivery Program Term Achievement

P2.1.1 Land use strategies, plans and processes are in place to effectively manage the impact of new development.

Operational Plan Task

P2.1.1.1 Commence development of plans and strategies as required by the Greater Sydney Commission's North District Plan.

GOVERNANCE MATTERS

Nil for this report.

RISK IMPLICATION STATEMENT

It is unknown how many additional SSD applications and local development applications will be submitted by 13 June 2025, which may further compromise the alternate housing scheme Council has prepared.

FINANCIAL CONSIDERATIONS

Nil for this report.

SOCIAL CONSIDERATIONS

The preparation of the TOD scenarios includes the planning for additional housing choice around the transport nodes, along with supporting the local centres revitalisation with opportunities for new retail facilities and new community infrastructure such as new libraries, open space and community centres.

ENVIRONMENTAL CONSIDERATIONS

The preparation of the TOD Scenarios has been premised on a series of environmental principles including avoiding environmentally sensitive areas by not encouraging development in areas containing high biodiversity, natural watercourses, steeply sloping land or bushfire affected lands and the principle of minimising tree canopy impacts - allowing more space around new buildings in development areas, to set aside space for existing and future trees, while also encouraging the replacement of any removed trees.

A Transport response is being developed, to mitigate the environmental impacts of new development with improved initiatives for walkability and active transport access to the shops and stations

COMMUNITY CONSULTATION

Nil for this report.

INTERNAL CONSULTATION

Nil for this report.

SUMMARY

DPHI have announced a change to when SSD applications and local Development applications will be saved.

Previously DPHI had advised that SSD applications and local development applications would be saved up until Council formally submits an alternate scheme to the Department (which could be 22/23 May 2025 if adopted by Council at the Extraordinary Meeting on 22 May). Additionally, SSD applications would only be saved once they had responded to SEARs and the application considered 'lodged'.

On 17 May 2025 DPHI advised that SSD applications and local development applications will be saved up until 13 June 2025 and the SSD applications only have to have been issued with SEARs. They no longer need to have responded to SEARs with an EIS to be saved. The changes are potentially significant as not only do applicants have another 3 weeks to submit applications, the time required to obtain SEARs is much less than would be required to respond to the SEARs with an EIS and 'lodge' the SSDA. There are currently ten SSDs on the planning portal that are at the SEARs stage (preparing the EIS) so these would automatically be saved. It is unknown how many additional applications will be submitted by 13 June, however DPHI have advised that they are not aware of any at this point in time.

Council officers met with representatives of DPHI on 19 May 2025 to discuss the changes. DPHI agreed that Council could defer its decision about whether to adopt its alternate housing scenario and formally submit it until closer to the 13 June cut-off date. This would allow Council the benefit of knowing how many additional SSD applications and local development applications would be saved, and the impact on the alternate scheme, before making a final decision. On this basis, it is recommended that Council defer consideration of the alternate housing scheme.

RECOMMENDATION:

That Council defer consideration of the draft amendments to KLEP 2015 outlined in GB.1 to this agenda paper, in anticipation of an Extraordinary Meeting of Council being held closer to 13 June 2025, being the date after which SSD applications and local development applications will not be accepted under the TOD planning controls.

Andrew Watson
Director Strategy & Environment

David Marshall
General Manager