



STOREY & GOUGH
LAWYERS

Our Ref: CG:250142

28 May 2025

Jasmine Tranquille
Senior Planner
Department of Planning, Housing and Infrastructure
Locked Bag 502
PARRAMATTA NSW 2124

Dear Ms Tranquille,

**Re: Eastside Roseville Action Group Inc and Hycorp Property Group
Objection to State Significant Development Application SSD 78996460 (SSDA)
relating to 16-24 Lord Street & 21-27 Roseville Avenue, Roseville ("the
Development Site")**

We act for Eastside Roseville Action Group Inc, ("**ERAG**") which is an incorporated association established with the purpose of opposing the development by Hycorp Property Group ("Hycorp") of the Development Site.

ERAG is in communication with approximately 200 Eastside Roseville local residents who reside in the vicinity of the Development Site and who are concerned about Hycorp's application under the State Significant Development pathway for consent to develop it.

Background

The Development Site, being situated within 400 metres of Roseville Railway Station, is subject to the Transport Oriented Development ("**TOD SEPP**") provisions of *State Environmental Planning Policy (Housing) 2021*.

These provisions effectively allow residential flat building development in certain areas where such developments would be otherwise prohibited.

Prior to the TOD SEPP provisions commencing (13 May 2024), the Development Site, being zoned R2 Low Density Residential under Ku-ring-gai Local Environmental Plan 2015, could not be developed as residential flats.

The Development Site is located in the Clanville Conservation Area ("**CCA**"), an area of single and two storey dwelling houses. That area has significant heritage character. The 9 houses which comprise the development site contribute to the significance and character of the CCA.

Ku-ring-gai Municipal Council ("Council") commenced proceeding in the Land & Environment Court challenging the validity of the TOD SEPP provisions due to the significant adverse impacts on a number of localities within the LGA.

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These proceedings have been adjourned by agreement to allow Council to continue public consultation on specific alternative planning options for the precincts in Ku-ring-gai LGA affected by the TOD SEPP.

Following extensive community and stakeholder engagement in November and December 2024 and consistent with the mediation agreement between the NSW Government and Council, Council publicly exhibited various options for alternative planning controls to those of the existing TOD program to support new housing within 400m of Roseville, Lindfield, Killara and Gordon stations.

The NSW Government is supporting Council through collaboration between the Department of Planning Housing and Infrastructure and Council, as it develops specific planning controls to replace the current TOD SEPP planning controls. Those alternative planning controls will deliver at least equivalent dwelling capacity to the current TOD program and are intended to be implemented by an amendment to the TOD SEPP.

As a result of public consultation, Council has identified those areas within the LGA where it is appropriate that the specific TOD planning controls should apply and has put forward altered TOD zones with different boundaries to those of the existing TOD zones.

On 25 March 2025, Council released its preferred option for planning controls to replace existing TOD planning controls (**Preferred Scenario**) for the LGA.

The Preferred Scenario will deliver at least equivalent dwelling capacity to that achievable under the TOD program.

The Preferred Scenario was publicly exhibited for public comment and community input between 2 April and 22 April 2025.

On 16 May 2025 Council released its alternative TOD planning controls (**TOD Alternative**), which took account of community feedback and essentially maintained the Preferred Scenario with several modifications. A meeting was scheduled for 22 May 2025 for Council to consider and, if accepted, pass a resolution adopting the TOD Alternative. That meeting was deferred and has been rescheduled for 5 June 2025, at which time Council will vote on the TOD Alternative.

Relevantly, the TOD Alternative removes the current TOD planning controls from the Development Site and retains R2 Residential zoning for the area in which it is located, thereby removing the ability for the proposed development to proceed.

Proposed Development

As a result of the Development Site falling within the TOD area, on 18 December 2024, Urbis Planning on behalf of Hyecorp, utilising the In-Fill Affordable Housing mechanism, lodged the SSDA for a residential flat building with infill affordable housing for the Development Site.

The proposed development was described as the construction of approximately 267 residential apartments in buildings up to 10 storeys in height including the provision of 17%



affordable housing. This would provide only 40 affordable apartments for 15 years and only 8 affordable apartments in perpetuity being the minimum allowable under the controls.

The proposal however seeks to achieve the maximum floor space for the site notwithstanding the DPHI Practice Note that calls for flexibility having regard to the height, bulk, scale of the development and constraints of the site.

The Development Site is within the Clanville Conservation Area, adjoins a heritage item and is close to a number of other heritage items. There are currently 9 residential dwellings within the Development Site which will have to be demolished if the development proceeds.

As the proposed development is an SSD, the Planning Secretary's Environmental Assessment Requirements ("**SEARS**") were required.

On 14 January 2025, SEARS for the proposed development were issued.

On 4 April 2025 the DPHI undertook an adequacy review of the proposed application.

On 30 April 2025, Hyecorp lodged an Environmental Impact Statement for the development.

Planning

A requirement of the SEARS is that the proposed development must demonstrate how the proposed built form (layout, height, bulk, scale, separation, setbacks, interface and articulation) addresses and responds to the context, site characteristics, streetscape and existing and future character of the locality.

We **attach** a site-specific report by SJB Planning which in considering this SEARS requirement states that *'Due to the excessive height, bulk and scale of the proposal, it will have unacceptable visual impact on the character of the CCA, on the streetscape and directly on adjoining properties'*.

This detailed SJB Planning Report addresses all relevant considerations for such a development on the Development Site and concludes that the application should be rejected on merit grounds.

Heritage Considerations

The Development Site lies within the Clanville Conservation Area, an area of historical, architectural and heritage significance. The Development Site adjoins a heritage item (Roseville Scout Hall) and is close to a number of other heritage items.

The Heritage Impact Statement submitted by Hyecorp (which was required by the SEARS) is not comprehensive as required by the 18 December Scoping meeting and did not consider the impact of the proposed development on the heritage significance and character of the area.

Of the 12 heritage items in the vicinity of the Development Site, only one, being the Roseville Scout Hall, was considered.



We **attach** a report by Lisa Truman Heritage ("the Truman Report") in which a detailed analysis of the impacts of the development are undertaken.

The Truman Report finds that the Hycorp Heritage Impact Statement:

- **Does not** follow the appropriate guidelines for assessing heritage significance or heritage impacts.
- **Does not** contain the required detailed historical analysis or fabric analysis of the existing houses and their settings and contains multiple factual errors about the history of the properties.
- **Does not** provide an assessment against the standard criteria to inform the statements made in the report about the significance of the buildings and their contribution to the significance and character of the Clanville HCA.
- **Does not** undertake an analysis of the conservation area as a whole and the contribution of the houses to the collective significance of the Clanville HCA.
- **Does not** reference critical documents such as previous and recent heritage studies, original architectural drawings and previous HIS reports for the properties which must inform any assessment of the impacts of the proposed development.
- **Does not** provide an analysis of the contribution of original facades, roof form and setting to the significance of the HCA or the reversibility of the additions; and is based on the incorrect assumption that any modification reduces significance.
- **Does not** provide evidence of the level of change.
- **Does not** identify numerous heritage items in the vicinity of the site that will be impacted by the proposed development or consider the impacts of the proposal on those heritage items.
- **Understates the impact** of the loss of nine individual houses which contribute to the significance and character of the Clanville HCA.
- **Does not** provide a historical and fabric analysis.
- **Does not** assess the proposal against Section 19A – Subdivision and Site Consolidation, and 19F – Development in the Vicinity of Heritage Items and HCAs.
- **Recommends substantial modifications** to the design to address its impact on the HCA and nearby heritage items due to such impacts warranting refusal on heritage grounds.

The Truman Report concludes that the proposed development will have a major adverse impact on the significance and character of the Clanville HCA, and the adjacent and nearby heritage items and HCA.



Council's Preferred Scenario Areas

As set out above, following extensive community and stakeholder engagement in November and December 2024 and pursuant to the mediation agreement between the Government and Council, Council publicly exhibited various options for alternative planning controls to those of the existing TOD program to support new housing within 400m of Roseville, Lindfield, Killara and Gordon stations.

Relevantly the Applicant lodged its application for SEARs in the knowledge of and after the close of that community and stakeholder engagement.

On 25 March 2025, after considering submissions and reports, Council released the Preferred Scenario, being its preferred option for planning controls to replace existing TOD planning controls for the LGA, and which materially differ from those of the current TOD program. Relevantly, the Preferred Scenario removes the current TOD planning controls from applying to the Development Site and will prohibit the proposed development.

Council publicly exhibited the planning controls of its Preferred Scenario for public comment and community input from 2 April to 22 April 2025.

On 16 May 2025 Council released the TOD Alternative which took account of community feedback and essentially maintained the Preferred Scenario. A meeting was scheduled to be held on 22 May 2025 for Council to consider and, if accepted, pass a resolution adopting the TOD Alternative. That meeting was deferred and has been rescheduled for 5 June 2025, at which time Council will vote on the TOD Alternative.

Hyecorp would have been aware of Council's actions to develop specific planning controls, intended to replace the current TOD controls, that deliver at least equivalent dwelling capacity to that of the TOD program. Hyecorp would also have been aware of the Government's support of Council in developing such controls.

If Council adopts the TOD Alternative on 5 June 2025 and having regard to the level of public submissions and the Government's support, the TOD Alternative should be given significant weight in the assessment of the Hyecorp application (see *Walker -v- North Sydney Council* (2000) 110 LGERA 397 at [31]).

In addition, having regard to Government support of Council in developing such planning controls, there should be no doubt that amendments to the LEP to implement the TOD Alternative will be made. In these circumstances, the TOD Alternative will be imminent and certain and following *Architects Haywood & Bakker Pty Ltd -v- North Sydney Council* [2000] NSWLEC 138 at [33] will be given significant weight.

The NSW Court of Appeal held in *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* (2003) 129 LGERA 195; at [51] that "imminence" indicates close temporal proximity of a draft planning instrument's application.



Inadequate community engagement under the Guidelines

Prior to the lodgement of the application, Hyecorp was alerted to possible inadequacies regarding the engagement and other matters by way of a letter from our client to Hyecorp dated 22 April 2025 which we are instructed was both emailed and served. A copy of that letter is attached and forms part of this submission as requested by DPHI.

The Undertaking Engagement Guidelines for State Significant Projects 3.5 says

"The Department encourages proponents to use innovative approaches to engagement to enable participation from a broad spectrum of community members. This can include the use of multiple channels such as traditional print, in person and digital. Digital forms of engagement through the major projects' website and other platforms such as social media, private websites and online meetings will continue to be increasingly important".

The Department also encourages proponents to maximise engagement through current and emerging platforms. Innovative engagement methods may include video, infographics, animations, digital visualisations, online forums and virtual consultation events or spaces. Consideration should be given to the need for translators and interpreters where appropriate.

It is apparent that the Engagement Guidelines have not been followed.

This failure has resulted in community concerns as to the veracity of the application and the rigor of any assessment.

We **attach** a report from Margaret Harvie of PlanCom Consulting, a consultation that specialises in environmental planning and community engagement.

On the SEARS engagement by Hyecorp for the proposed development, Ms Harvie comments as follows:

Never in my 25 years have I seen a high impact development in inner Sydney including the North Shore attract such little public attention in the engagement period.

The engagement process has been inadequate on many fronts and does not meet the requirements of the NSW government guidelines.

In particular:

- *It was not **open and inclusive** in that it did not seek out participation of all groups.*
- *It was not **easy to access** in that the information provided was not clear about the proposal, the impacts and the deadline.*
- *It was not **relevant** in that the survey did not seem to give adequate opportunity for people to express negative concerns.*



- *It was not **timely** in that it felt rushed with the engagement periods being very truncated.*
- *It was not **meaningful** in that there was limited opportunity for direct contact between the proponent and the community.*

Ms Harvie concludes that:

The engagement process for this project was inadequate for the purpose of the EIS as per the Engagement Outcomes Report. As this same engagement underpins the SIA I suggest that the validity of this work is also put in doubt.

There was simply a lack of participation and therefore available data from the community to assess the community's views on the proposal and a lack of input to help shape the future of this proposal.

On 15 May 2025, we forwarded a letter to the Department of Planning regarding our client's concerns with the Hycorp Engagement Outcomes Report.

Sydney Metro

The Development Site is in close proximity to the existing Sydney Metro line. Attached to the SJB Planning Report is a report by Mitch Ayres Surveying which supports our comments about potential impacts of the Metro tunnel as it traverses East Roseville, having regard in particular to the depth of the Metro tunnels in close proximity to the Development Site and to the protection reserves around the tunnels. The strata are owned by Sydney Metro.

The Survey reports that the Metro Stratum depth in the vicinity of the Development Site is between 4.3 and 10.2 metres below natural ground level but are mostly less than 8 metres below natural ground level. 14 Lord Street is 4.3 metres and 19 Roseville Avenue is 6.1 metres. Hycorp was aware of these depths.

Proposed developments near Sydney Metro infrastructure must be planned, designed, constructed and maintained to ensure the protection of existing and future metro infrastructure including effects on:

- the safety and structural integrity of the tunnels and associated infrastructure by development related loads, induced ground displacement or structural lining movement and
- the safe and effective operation of the network including the operational capacity, maintenance and the efficiency of the network during any stage of the proposed development.

As a result of the proximity of the Metro Stratum to the Development Site, the approval of Sydney Metro shall be required before any development can proceed. This does not appear to have been granted. A wedge of the northwestern-most land comprising the development site sits above the first protection reserve in which any construction work or excavation is



legally prohibited in accordance with the Sydney Metro Corridor Protection Guidelines (**CP Guidelines**).

We understand that at its closest point, the excavation works proposed by the applicant will be just a few metres away from the boundary of the first protection reserve. This is consistent with the Geotechnical Investigation of Douglas Partners dated 16 April 2025 (Appendix U of the EIS), which contemplates (at page 17) that ground anchors to support a planned shoring wall may not be feasible under the CP Guidelines.

Accordingly, it is uncertain that an approval for the basement of the proposed development will be given. If a development consent were issued subject to receiving approval from TfNSW, the consent would lack finality. A consent cannot postpone the resolution of a difficult issue or refer them to others for determination (*Lend Lease Management Pty Ltd - v-Sydney City Council* (1986) 69 LGRA 61, *Aldous -v- Greater Taree Council* (2009) 167 LGERA 165).

Conclusion

The proposed residential flat development containing up to 267 dwellings within a number of buildings at the Development Site has neither community nor Council support.

The Development Site contains 9 established dwellings, is located in close proximity to a number of heritage items and is within a heritage conservation area.

The demolition of the 9 dwellings, each of which contributes to the heritage conservation area, will have a devastating impact on the heritage significance of both the adjoining and nearby heritage items and the conservation area.

The proposed development ignores the existing established character of the locality in a desire to achieve the maximum return to the developer.

The height, bulk and scale are such that it bears no relationship to its setting. It neither addresses nor responds to the context, site characteristics, streetscape and existing and future character of the locality.

The TOD Alternative, which achieves the Government's required dwelling capacity for the LGA, should be the dominant planning controls for any development on the Development Site.

The attached reports conclude that the proposed development does not comply with basic planning controls, does not respect its neighbours and the community, ignores the importance of the heritage conservation area and items in the vicinity and disregards the procedures to be following in undertaking a development of this kind.

Having regard to all of the circumstances relating to the Application, ERAG requests the Applicant to withdraw the application.

In the event that this does not occur, ERAG requests DPHI to reject the Application.



Our client will make further submissions with respect to this application if the TOD Alternative is adopted and/or changes are made to the Application.

Newspaper reporting

ERAG is aware of the publication of a newspaper article in the Daily Telegraph on 24 May 2025 ("Roseville residents seek donations to fight affordable housing development"). That article includes statements made by the Minister regarding the Hyecorp's application for development consent (SSD-78996460) as follows:

"The public exhibition process doesn't require high-priced lawyers or consultants to have your say,"

"Sadly, though, this group of residents have set a minimum price of \$1000 per household to try and stop new residents being part of their community."

"It's a staggering and un-Sydney-like attitude to our collective responsibility to address our housing challenges."


Having regard to these comments, ERAG is concerned that their legitimate objections to the Hyecorp development at East Roseville will not be given appropriate consideration as it appears the Minister considers their position is inappropriate and un-Sydney-like.

ERAG are aware of the Government's desired policy to increase housing availability around transport hubs and requests the Minister assess the Hyecorp application on its merits.

Our client reserves its rights in the event that the decision on the Hyecorp application is not based on merit.

Yours faithfully,

STOREY & GOUGH



Chris Gough
Senior Partner, Accredited Specialist Planning & Environment Law