



**EXTRAORDINARY MEETING  
TO BE HELD ON TUESDAY, 4 JUNE 2024 AT 7:00 PM  
LEVEL 3, COUNCIL CHAMBER**

**A G E N D A**

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**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 deal with the following Notices of Motion:

- Transport Oriented Development SEPP - A fresh approach aimed to achieve a better outcome for Ku-ring-gai
  - Cancellation of Tiny Forest Project at West Pymble Village Green

Requested by:

Councillor Cedric Spencer  
WAHROONGA WARD

Councillor Jeff Pettett  
COMENARRA 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 **Extraordinary Meeting Background Information**

**8**

File: S14099

Under Clause 3.2 of the Code of Meeting Practice, I have received in writing a request from Councillors Spencer and Pettett calling for an extraordinary meeting on the topics of:

1. Transport Oriented Development SEPP - A fresh approach aimed to achieve a better outcome for Ku-ring-gai; and
2. Cancellation of Tiny Forest Project at West Pymble Village Green

I note there have been queries as to the number of extraordinary meetings this year, but the current arrangement of monthly ordinary meetings plus optional extraordinary is actually more flexible and cost efficient than Council's arrangement before June 2019 when ordinary meetings were held twice a month.

On each of these two topics, I write to provide information to set the context of each decision.

### **Transport Oriented Development Provisions in the Housing SEPP**

Ever since this issue arose in November 2023, I have provided the public with regular updates by way of Mayoral Minute at the start of each monthly ordinary meeting as well as each relevant extraordinary meeting. A summary of key dates and points is provided in **Attachment 1**.

It should also be noted that at this stage and despite all attempts to negotiate reasonable outcomes, legal action and/or mediation is the only way for council to potentially save ratepayers over ten million in infrastructure costs relating to the four affected precincts.

### **Tiny Forest Project**

The Tiny Forest program is an initiative by Earthwatch to provide "*densely packed patches of native bushland the size of a tennis court, right in the heart of our cities. These urban wildlife oases are a unique nature-based solution, reconnecting people with nature and helping to mitigate our urban climate and biodiversity challenges.*"

As part of the initiative, Council staff had (independent of any Councillor direction) applied for a grant and was successful in attaining one. Ku-ring-gai's Tiny Forest Project was considered as part of GB17 in the 21 November 2023 Ordinary Meeting of Council.

**Resolved:**

(Moved: Councillors Pettett/Kay)

That Council endorse a Tiny Forest Project within the Ku-ring-gai LGA and endorse the preferred site location at the West Pymble Village Green, or an alternative site as determined by Council officers.

**CARRIED UNANIMOUSLY**

It is important to respect any Councillor's right to revisit a decision in light of new information. It should be noted that when the project was first put before the Council, the affected area was proposed to be 218.56 sqm (4.3%) of a 5,124.0 sqm site.



A recently updated project design now indicates that a more substantial 260 sqm (5.1%) of the site will be covered by newly planted trees. Part of the community angst is driven by the fact that the temporarily fenced off area for equipment and works is much larger than the actual planting site.



The Tiny Forest is scheduled to be planted on 16 June, which is prior to our Ordinary Meeting of Council on 18 June hence this call for an extraordinary meeting.

More project information is available in **Attachment 2**, and each Councillor has the right to revisit this decision in light of the new information.

**Recommendation:**

That Council notes and receives this Mayoral Minute.

**MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN**

NM.1 **Transport Oriented Development SEPP - A fresh approach aimed to achieve a better outcome for Ku-ring-gai**

**18**

File: S14427

**Notice of Motion from Councillors Spencer and Pettett dated 22 May 2024**

The new "TOD SEPP" planning controls came into effect from 13 May 2024, and include: Permissibility – Allowing residential flat buildings in residential zones and local centre zones, along with shop top housing in local centre and commercial zones.

As you are aware, the four stations in Ku-ring-gai affected by the TOD SEPP will be Gordon, Killara, Lindfield and Roseville. Ku-ring-gai is the only Council to receive the new TOD SEPP without further extension.

We do not believe that Council's continued spending of ratepayers' money on advertising and legal fees is sustainable in the longer term. We do not believe that battling the NSW Government is efficient or effective.

The reality is that the new "TOD SEPP" planning controls came into effect from 13 May 2024 for Ku-ring-gai whereas other councils were granted extensions. The reality is that Ku-ring-gai has to try and work with the NSW Government by negotiating.

The current Council approach has led to many residents being traumatised, bewildered and confused. The community should not be in this current state and this needs to be rectified.

We, therefore, move that:

- A. Ku-ring-gai Council wishes to constructively work with the Minister in regards to the new TOD SEPP
- B. This Council immediately assembles a working team including former Mayors Cedric Spencer and Jeff Pettett and Councillor Greg Taylor
- C. To seek an urgent audience with the New South Wales Minister for Planning and Public Spaces to discuss the following:
  - i. Ku-ring-gai Council's genuine intentions to negotiate with the Minister in good faith on behalf of all Ku-ring-gai residents in implementing the new TOD SEPP
  - ii. Council's intentions to draw up a new LEP by working with the Minister to achieve the housing needs
  - iii. Council to seek reprieve from implementation of the new TOD SEPP on 13 May 24 on all four stations, including Gordon, Killara, Lindfield and Roseville.
- D. As a genuine sign of Council's willingness to work with the state government that Council suspend the current legal action pending the result of the discussions and negotiations.
- E. This team of negotiators will include the General Manager and relevant staff but exclude Councillors who have already met with the Minister or his Department.
- F. This team will report back to Council as an urgent matter as time is of the essence.

**Recommendation:**

That the above Notice of Motion as printed be adopted.

File: S14514

**Notice of Motion from Councillors Spencer and Pettett dated 22 May 2024**

In November 2023 Council resolved to proceed with the Tiny Forest Project based on the following summary.

The proposed Tiny Forest project led by Earthwatch Australia, is a unique opportunity to engage with the community and increase the amenity of the surrounding urban area. The project is privately funded and promotes community engagement and research into boosting growth and biodiversity of native forests.

The West Pymble Village Green has been identified as a suitable site for tree planting within the Urban Forest Strategy and the southern boundary has been chosen in the past as a National Tree Day site. Tree species to be planted will be native to the area and align with the local Critically Endangered Ecological Community Sydney Turpentine Ironbark Forest (STIF). Establishment of this tiny forest will add environmental restrictions to any future use of the land which would require the removal of the Tiny Forest.

The Community Consultation was based on the broad statement: "As part of Council's adoption of the Urban Forest Policy in 2020 and development of the Urban Forest Strategy since then, the community has been consulted extensively about trees including both public and private tree management and issues."

The local West Pymble community believe there was no real consultation in regards to this project being built. The site may well be a suitable site for this project; however, the recent feedback has been overwhelmingly clear that the majority of the community of West Pymble were not aware of this project, nor do they want it at this location. If a Tiny Forest project is to be successful at an alternative location, proper local community engagement prior to its commencement is essential for its success.

We, therefore, move:

That Council cancels the Tiny Forest Project at the West Pymble Village Green.

**Recommendation:**

That the above Notice of Motion as printed be adopted.

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## MAYORAL MINUTE

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### EXTRAORDINARY MEETING BACKGROUND INFORMATION

Under Clause 3.2 of the Code of Meeting Practice, I have received in writing a request from Councillors Spencer and Pettett calling for an extraordinary meeting on the topics of:

1. Transport Oriented Development SEPP - A fresh approach aimed to achieve a better outcome for Ku-ring-gai; and
2. Cancellation of Tiny Forest Project at West Pymble Village Green

I note there have been queries as to the number of extraordinary meetings this year, but the current arrangement of monthly ordinary meetings plus optional extraordinary is actually more flexible and cost efficient than Council's arrangement before June 2019 when ordinary meetings were held twice a month.

On each of these two topics, I write to provide information to set the context of each decision.

#### Transport Oriented Development Provisions in the Housing SEPP

Ever since this issue arose in November 2023, I have provided the public with regular updates by way of Mayoral Minute at the start of each monthly ordinary meeting as well as each relevant extraordinary meeting. A summary of key dates and points is provided in **Attachment 1**.

It should also be noted that at this stage and despite all attempts to negotiate reasonable outcomes, legal action and/or mediation is the only way for council to potentially save ratepayers over ten million in infrastructure costs relating to the four affected precincts.

#### Tiny Forest Project

The Tiny Forest program is an initiative by Earthwatch to provide "*densely packed patches of native bushland the size of a tennis court, right in the heart of our cities. These urban wildlife oases are a unique nature-based solution, reconnecting people with nature and helping to mitigate our urban climate and biodiversity challenges.*"

As part of the initiative, Council staff had (independent of any Councillor direction) applied for a grant and was successful in attaining one. Ku-ring-gai's Tiny Forest Project was considered as part of GB17 in the 21 November 2023 Ordinary Meeting of Council.



**Resolved:**

(Moved: Councillors Pettett/Kay)

That Council endorse a Tiny Forest Project within the Ku-ring-gai LGA and endorse the preferred site location at the West Pymble Village Green, or an alternative site as determined by Council officers.

**CARRIED UNANIMOUSLY**

It is important to respect any Councillor's right to revisit a decision in light of new information. It should be noted that when the project was first put before the Council, the affected area was proposed to be 218.56 sqm (4.3%) of a 5,124.0 sqm site.



A recently updated project design now indicates that a more substantial 260 sqm (5.1%) of the site will be covered by newly planted trees. Part of the community angst is driven by the fact that the temporarily fenced off area for equipment and works is much larger than the actual planting site.




The Tiny Forest is scheduled to be planted on 16 June, which is prior to our Ordinary Meeting of Council on 18 June hence this call for an extraordinary meeting.

More project information is available in **Attachment 2**, and each Councillor has the right to revisit this decision in light of the new information.

**RECOMMENDATION:**

That Council notes and receives this Mayoral Minute

Councillor Sam Ngai  
Mayor

- Attachments:**
- A1  Attachment 1 - Transport Oriented Development Key Dates 2024/188554
  - A2  Attachment 2 - Tiny Forest Background Information 2024/188547

**Attachment 1 – Transport Oriented Development Key Dates**

09 November 2023 – Letter received from Minister re: National Housing Accord and each Council’s role to deliver housing.

21 November 2023 – Unanimous Council resolution to write to the Planning Minister re: concerns.

23 November 2023 – Letter from Mayor to Planning Minister seeking a discussion re: Housing.

27 November 2023 – Official response from Planning Minister saying he is open to a meeting. Meeting is set to 15 February 2024, but later postponed by the Minister to 29 February 2024.

28 November 2023 – State Government media release “New planning rules to fast track low and mid rise housing”

05 December 2023 – High level Transport Oriented Development (TOD) information accidentally published on Department of Planning website before being unpublished moments later. Reported by ABC and SMH.

12 December 2023 – Ordinary Meeting of Council. TOD details were not yet available on Department of Planning website, and Council was awaiting details.

18 December 2023 – TOD program documentation released on Department of Planning website.

16 January 2024 – Department of Planning met with and briefed Council staff on the details of the TOD program. Ku-ring-gai staff were the second of fourteen councils to be briefed.

24 January 2024 – Department met with and briefed Councillors for 30 minutes on the details of the TOD program. Ku-ring-gai was the first of thirteen councils to be briefed.

05 February 2024 – Extraordinary Meeting of Council where Council unanimously rejected the State Government’s planning controls in their proposed form. It should be noted that Crs Spencer and Pettett were not available at this meeting.

15 February 2024 – Extraordinary meeting of NSROC. At this meeting Councillors and Mayors expressed the preference to be provided a housing target and allow for each Council to update their own Local Environment Plan (LEP) to meet the target.

29 February 2024 – First meeting with Planning Minister, Department staff, Mayor Ngai, and Council staff. Key points were that:

- Specific targets for the four precincts (Gordon, Killara, Lindfield, Roseville) were not yet available.
- Robust cabinet-in-confidence modelling behind the scenes. The modelling indicates that only Gordon, Killara, Lindfield and Roseville meet the criteria and that the other stations do not.
- No funding committed to improve known local infrastructure issues.
- Planning Minister offered a deferred commencement of 6 months for *some* of these precincts, but required that others must commence April 2024. The Mayor and Council staff indicated that 6 months may not be sufficient to conduct capacity studies, properly draw up a new LEP, and consult the community. The preference was for 12 months deferred commencement to conduct proper planning with an accelerated timeline.
- Planning Minister told the Mayor that he will meet with him again next week.

It is noted that other TOD-affected Councils likely had their meetings with the Planning Minister after 29 February, at which point the pragmatics of a 9-15 month deferred commencement may have gained traction. However the Department did not loop back to Ku-ring-gai to offer similar terms.

01 March 2024 – Department delivered targets to Council staff over the phone. 4,500 – 5,000 in each precinct with the ability to do minor shuffles between precincts (e.g. 4,000 Killara, 6,000 Gordon). Deferred commencement 6 months only and not available for all four stations. No housing targets were provided for the wider Local Government Area (LGA).

04 March 2024 – Councillors discussed TOD options at a planning workshop.

07 March 2024 – Second meeting with Planning Minister was intended for this day, but the Mayor was subsequently told that he was no longer invited.

25 March 2024 – Extraordinary Meeting of Council. Council staff proposed a new LEP for the entire LGA, but Councillors wanted LGA-targets before updating the LEP for the LGA.

11 April 2024 – Letter from Minister Scully to council responding to concerns about Heritage, Traffic and Tree Canopy.

12 April 2024 – State Government media release '12 out of the 13 local government areas have engaged with the DPHI to develop housing plans that deliver greater or equal housing numbers than would be required by the original TOD SEPP'. Calendar for 37 precincts also released.

12 April 2024 – Mayor Ngai issued a letter to Minister Scully, saying that he had always been willing to engage with DPHI but that he was still awaiting the second meeting (originally scheduled 07 March).

29 April 2024 – Gazettal of TOD Provisions in the Housing SEPP.

30 April 2024 – Draft TOD maps released.

02 May 2024 – Second meeting with Planning Minister.

- Mayor indicated that residents had requested potential legal action in the absence of the opportunity to properly plan and fund the precincts.
- Mayor sought 12 months deferred commencement (this time in line with similar dates offered to other councils) but this was not accepted. Minister indicated that TOD controls will be lifted once an LEP which matched or exceeds is delivered.
- Minister did not commit any funding to improve local infrastructure issues.
- Mayor indicated peculiarities with the TOD maps that should be finetuned. The Department offered the opportunity to finetune so long as the details were signed off by the Mayor and the General Manager by the following day (at which point the maps would be finalised). The Mayor indicated that such decisions could not be made in such a short timeframe and without a council resolution.

08 May 2024 – Council resolved to commence studies around the four TOD precincts to identify ways to distribute dwellings within each precinct for better resident outcomes. Council also resolved to commence legal action.

20 May 2024 – First hearing of the Parliamentary Inquiry into the Development of the Transport Oriented Development Program.

### **Attachment 2 – Tiny Forest Project Background Information**

This attachment (prepared by Council staff) provides an outline of the facts in relation to the Tiny Forest Project in Kendal Street, West Pymble.

#### **Council's Decision of November 21, 2023**

At its meeting of 21 November 2023 Council considered a report on the Tiny Forest Project (GB.17). The report to Council included details of the grant program which led to the project, details of the preferred project location, the indicative size of the project's footprint, details of the limited consultation carried out to that point in time, and a copy of the draft memorandum of understanding which was subsequently signed.

Consideration of the project by Council was preceded by approval of the grant application by Council's Executive in the ordinary manner.

Upon consideration of the report, Council resolved:

*After previously having declared a conflict of interest on item GB.17, Councillor G.Taylor withdrew from the meeting during discussion on the below matter.*

#### **207 Tiny Forest Project**

File: S05318/16

Vide: GB.17

To provide an overview of the Earthwatch Australia Tiny Forest Project and to seek Council's endorsement to proceed with a Tiny Forest within the Ku-ring-gai Local Government Area (LGA).

#### **Resolved:**

(Moved: Councillors Pettett/Kay)

That Council endorse a Tiny Forest Project within the Ku-ring-gai LGA and endorse the preferred site location at the West Pymble Village Green, or an alternative site as determined by Council officers.

**CARRIED UNANIMOUSLY**

*After debate on the above matter concluded, Councillor G.Taylor returned to the Meeting.*

#### **What is a Tiny Forest?**

Tiny forests are densely packed patches of native bushland around the size of a tennis court. These urban wildlife oases have the potential to help fight pollution and global











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## NOTICE OF MOTION

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### TRANSPORT ORIENTED DEVELOPMENT SEPP - A FRESH APPROACH AIMED TO ACHIEVE A BETTER OUTCOME FOR KU-RING-GAI

#### Notice of Motion from Councillors Spencer and Pettett dated 22 May 2024

The new "TOD SEPP" planning controls came into effect from 13 May 2024, and include:  
Permissibility – Allowing residential flat buildings in residential zones and local centre zones, along with shop top housing in local centre and commercial zones.

As you are aware, the four stations in Ku-ring-gai affected by the TOD SEPP will be Gordon, Killara, Lindfield and Roseville. Ku-ring-gai is the only Council to receive the new TOD SEPP without further extension.

We do not believe that Council's continued spending of ratepayers' money on advertising and legal fees is sustainable in the longer term. We do not believe that battling the NSW Government is efficient or effective.

The reality is that the new "TOD SEPP" planning controls came into effect from 13 May 2024 for Ku-ring-gai whereas other councils were granted extensions. The reality is that Ku-ring-gai has to try and work with the NSW Government by negotiating.

The current Council approach has led to many residents being traumatised, bewildered and confused. The community should not be in this current state and this needs to be rectified.

We, therefore, move that:

- A. Ku-ring-gai Council wishes to constructively work with the Minister in regards to the new TOD SEPP
- B. This Council immediately assembles a working team including former Mayors Cedric Spencer and Jeff Pettett and Councillor Greg Taylor
- C. To seek an urgent audience with the New South Wales Minister for Planning and Public Spaces to discuss the following:
  - i. Ku-ring-gai Council's genuine intentions to negotiate with the Minister in good faith on behalf of all Ku-ring-gai residents in implementing the new TOD SEPP
  - ii. Council's intentions to draw up a new LEP by working with the Minister to achieve the housing needs

**Item NM.1**

**S14427**

- iii. Council to seek reprieve from implementation of the new TOD SEPP on 13 May 24 on all four stations, including Gordon, Killara, Lindfield and Roseville.
- D. As a genuine sign of Council's willingness to work with the state government that Council suspend the current legal action pending the result of the discussions and negotiations.
- E. This team of negotiators will include the General Manager and relevant staff but exclude Councillors who have already met with the Minister or his Department.
- F. This team will report back to Council as an urgent matter as time is of the essence.

**RECOMMENDATION:**

That the above Notice of Motion as printed be adopted.

Councillor Cedric Spencer  
**Councillor for Wahroonga Ward**

Councillor Jeff Pettett  
**Councillor for Comenarra Ward**

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## NOTICE OF MOTION

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### CANCELLATION OF TINY FOREST PROJECT AT WEST PYMBLE VILLAGE GREEN

#### Notice of Motion from Councillors Spencer and Pettett dated 22 May 2024

In November 2023 Council resolved to proceed with the Tiny Forest Project based on the following summary.

The proposed Tiny Forest project led by Earthwatch Australia, is a unique opportunity to engage with the community and increase the amenity of the surrounding urban area. The project is privately funded and promotes community engagement and research into boosting growth and biodiversity of native forests.

The West Pymble Village Green has been identified as a suitable site for tree planting within the Urban Forest Strategy and the southern boundary has been chosen in the past as a National Tree Day site. Tree species to be planted will be native to the area and align with the local Critically Endangered Ecological Community Sydney Turpentine Ironbark Forest (STIF). Establishment of this tiny forest will add environmental restrictions to any future use of the land which would require the removal of the Tiny Forest.

The Community Consultation was based on the broad statement: "As part of Council's adoption of the Urban Forest Policy in 2020 and development of the Urban Forest Strategy since then, the community has been consulted extensively about trees including both public and private tree management and issues."

The local West Pymble community believe there was no real consultation in regards to this project being built. The site may well be a suitable site for this project; however, the recent feedback has been overwhelmingly clear that the majority of the community of West Pymble were not aware of this project, nor do they want it at this location. If a Tiny Forest project is to be successful at an alternative location, proper local community engagement prior to its commencement is essential for its success.

We, therefore, move:

That Council cancels the Tiny Forest Project at the West Pymble Village Green.

#### **RECOMMENDATION:**

That the above Notice of Motion as printed be adopted.

**Extraordinary Meeting - 4 June 2024**

**NM.2 / 21**

**Item NM.2**

**S14514**

Councillor Cedric Spencer  
Councillor for Wahrenonga Ward

Councillor Jeff Pettett  
Councillor for Comenarra Ward