

What we heard

Transport Oriented Development
policy consultation



What we heard – Transport Oriented Development

The aim of the Transport Oriented Development (TOD) program is to encourage sustainable and mixed-use development around transport and create vibrant and walkable communities now and for future generations. By building more homes and affordable housing near metro and rail stations, more people can live close to transport, jobs, services, night life and amenities.

The TOD program includes:

- accelerated state-led rezonings to deliver an estimated 47,800 new, well-located high and mid-rise homes over the next 15 years and
- amendments to the State Environmental Planning Policy (Housing) 2021 (the Housing SEPP) to introduce TOD planning controls within 400 m of 37 stations to deliver more affordable, well-designed and well-located homes.



Consultation

In preparing changes to the state environmental planning policy, the Department of Planning, Housing and Infrastructure (DPHI) undertook targeted consultation with affected councils, planning peak stakeholders, community housing advocacy organisations and community organisations.

A total of 27 submissions were received (see Appendix A) - 14 from councils and 13 from peak bodies and advocacy organisations.

Briefings with Council staff and Councillors

Briefings were conducted between January and March 2024 with the 14 councils affected by the new TOD planning controls.

At these sessions, Department officials briefed council staff and councillors on the TOD program and proposed changes to the planning controls. At these briefings DPHI listened to feedback from councils about how the controls could be changed to deliver improved outcomes, opportunities to increase the number of stations for inclusion in the program, and how local councils could use their own housing strategies to increase housing delivery in their local areas.

During this period, DPHI also consulted with Local Government NSW (LGNSW).



Briefings with industry and advocacy groups

Briefings were also provided to 14 professional peak bodies, industry groups, advocacy groups and reference groups as part of the targeted consultation in December 2023, January and February 2024.

Professional peak bodies:

- Australian Institute of Architects (AIA)
- Planning Institute of Australia (PIA)

Industry groups:

- Planning and Professional Peaks Forum
- Urban Development Institute of Australia (UDIA)
- Urban Taskforce
- Property Council Australia
- Housing Industry Association
- Building Council of Australia (BCA)
- Community Housing Industry Association (CHIA)

Advocacy groups:

- Shelter NSW
- Committee for Sydney
- WalkSydney
- Sydney YIMBY

Reference groups:

- Heritage Council of NSW



What DPHI heard and how it's responding

Working together

DPHI heard that, largely, councils were keen to work in collaboration with the department to deliver more housing and respond to the housing crisis. Of the 13 councils significantly impacted by the program, 12 engaged with DPHI around a process for developing housing plans that deliver greater or equal housing numbers than would be required by the TOD controls.

Further discussions were held with councils as part of this process, and several councils not only welcomed the opportunity to develop housing plans for existing TOD sites, but wanted more TOD sites to be added within their local area.

As a result, a further 6 stations were added to the list of TOD locations at Cardiff, Cockle Creek, Belmore, Lakemba, Punchbowl and Woy Woy.

These collaborative conversations resulted in 37 TOD locations being taken forward, 18 commencing from May 2024 with the majority finalised by the end of 2024.

The councils that worked with DPHI on this process will phase the introduction of the TOD controls on certain sites to allow for master planning and more detailed work around these stations to be completed. Should a council fail to undertake local planning, nor provide equal or greater housing than proposed, the TOD controls will come into effect in line with the published schedule.

A Guide to Transport Oriented Development will accompany the TOD controls. It will provide information on applying the policy and include considerations on amenity and design, heritage, affordable housing and future strategic planning.

Making sure DPHI doesn't lose important retail and employment land

Councils flagged the importance of considering the impacts of the TOD controls on retail and employment lands. In particular, consideration of the impacts of introducing residential flat buildings (RFBs) and shop top housing in E1 Local Centre and E2 Commercial Centre zones and whether RFBs would displace employment generating land uses, and impact on retail active frontages.

Feedback was also invited on the inclusion of MU1 Mixed Use zone in the program.

DPHI listened and RFBs have been limited to the residential and E1 Local Centre zones only. The MU1 Mixed Use zone will not be included in TOD controls.

Floor space ratio (FSR) and maximum building height

Consensus from feedback was that the FSR and maximum building height controls for 6 storey developments required closer review. Submissions highlighted a misalignment between the FSR and height controls proposed - with the proposed FSR of 3:1 likely to deliver higher developments or result in difficulty in achieving positive amenity and landscaping outcomes.

Submissions proposed a range of solutions, including:

- reducing the FSR to between 1.8:1 and 2.5:1 to match the proposed height, delivering 6-storey developments
- increasing the height to between 28 m and 31 m to match the proposed 3:1 FSR, delivering up to 10-storey developments and delivering more dwellings per site
- not introducing a prescribed FSR and relying on height to deliver 6-storey developments or introducing a maximum site coverage control rather than relying on FSR to support more architectural flexibility while delivering more diverse outcomes.

DPHI agrees that a modest increase to heights for both RFBs and shop top housing would deliver better design outcomes. The TOD controls will include:

- maximum building height of 22 metres for residential flat buildings to maintain design standards, and
- maximum building height of 24m for buildings containing shop top housing to accommodate commercial and retail ceiling heights to support diverse activities and uses on the ground floors.

The TOD controls will also include a maximum FSR of 2.5:1 to allow for buildings of up to 6 storeys to be delivered, while providing for landscaping, setback, privacy and open space standards to be met.

Minimum lot widths and sizes

Feedback from submissions on minimum lot widths and sizes varied:

- Council submissions indicated a preference for a prescribed lot width and size.
- Industry groups welcomed the flexibility of no prescribed controls in these areas, noting the varied lot sizes across TOD locations, and potential for delivering diversity in housing.
- Professional peak bodies suggested a minimum lot size to encourage site amalgamation.

DPHI reviewed the feedback and undertook additional modelling to better understand the impacts of implementing no minimum controls for lot size and width. As a result, the TOD controls will include a 21 metre minimum lot width, and no minimum lot size.

Calibrating these controls will prevent lot sterilisation and encourage lot amalgamation, while providing for landscaping, setback, privacy and open space standards to be met. They will also enable development to occur on a range of lot sizes and encourage different design responses to deliver diverse housing outcomes.

Active street frontages (ASF)

DPHI consulted on the inclusion of an active street frontage clause for RFBs and shop top housing in TOD locations. Several councils flagged in their submissions that active frontages may not be appropriate in all locations, and that requiring commercial spaces on the ground floor may not lead to good outcomes in all instances.

DPHI listened to the feedback, and the TOD controls will include an active street frontage clause that only applies to RFBs in E1 Local Centre zones to ensure that an active street frontage is considered for buildings at the ground floor in the merit assessment process.

Parking rates

DPHI consulted on maximum parking rates in TOD locations, and received mixed feedback, including:

- support for establishing maximum parking rates, particularly within Sydney metropolitan areas, noting the need for more active transport and mode-share solutions in TOD locations
- support for parking rates to remain consistent with the parking rates currently prescribed in the Housing SEPP
- proposal to introduce no parking controls to increase flexibility for developments to respond to market conditions
- concerns, specifically from regional councils, that maximum parking rates may not work effectively in areas outside of Sydney because of different car use trends and differences in the reliability and frequency of public transport

DPHI considered all of the feedback, and the TOD controls will not prescribe new parking rates. This means that the existing parking rates in Chapter 4 of the Housing SEPP will remain unchanged and will apply to all apartment developments across the State, providing a consistent approach to parking in the assessment process.

Additionally, Section 19 of the Housing SEPP sets minimum rates for affordable housing, and these rates will apply to the affordable housing component of TOD developments.

Councils are encouraged to review their parking rates as part of their strategic planning in TOD locations.

DPHI also notes that Transport for NSW are reviewing the RTA parking guidance at this time.

Design and development standards to support amenity

DPHI consulted on including additional design standards for RFBs and shop top housing in TOD locations. Feedback was mixed, including:

- strong support for retaining the Apartment Design Guide (ADG) as the principal guide for design standards and objectives for apartments, with no additional design standards included in the TOD controls. Some councils suggested a review of the ADG to capture mid-rise typologies.
- that the ADG was too restrictive
- requests for the inclusion of increased requirements for deep soil planting and apartment mix to increase housing diversity.

DPHI listened to this feedback and determined that the ADG will continue to be the principal guiding document for apartment development, including TOD developments, to provide for a consistent approach for apartment design considerations in the planning system. Given this, the TOD controls will not include any additional design criteria providing a more consistent approach for development assessment planners and applicants.

Affordable housing

DPHI consulted on the requirement to provide affordable housing in perpetuity in TOD locations for RFB and shop top housing development. DPHI received a range of feedback in the submissions, including:

- general support for mandatory affordable housing in perpetuity, with differing views on how the affordable housing (AH) could be delivered:
 - o some submissions supported on-site delivery, with others proposing a mix of on-site and cash contributions as the preferred mechanisms
 - o some concerns about the potential administrative burden associated with developing and implementing a comprehensive affordable housing contribution scheme, or managing individual affordable housing units in a building due to the associated strata costs
- concerns the proposed 2% rate was low, with feedback from the Professional Peak bodies suggesting that the rate could start at between 10 – 15%
- the need to clearly outline the increase in AH requirements over time
- seeking clarity on the interaction between the TOD AH provisions and the Infill Affordable Housing provisions in the Housing SEPP, with:

- Support from Community Housing peaks for mandatory AH in the TOD controls to apply in addition to the Infill Affordable Housing incentives
- Some industry groups flagging that mandatory AH would be appropriate where there was substantial value add through increased density, and that mandatory AH proposed under TOD controls should switch off when the Infill Affordable Housing SEPP provisions are used, to avoid cumulative issues on feasibility

DPHI listened to the feedback and considered the mechanisms available in a SEPP to require affordable housing to be provided in TOD locations. The TOD controls will require a minimum 2% mandatory affordable housing contribution, delivered onsite and in perpetuity for developments with a minimum Gross Floor Area of 2000sqm, and managed by a Community Housing Provider. The rate will increase over time to a published schedule, and will reflect market conditions.

The Infill Affordable Housing incentives in the Housing SEPP will also apply in TOD locations, with contributions to be in addition to the requirement to provide 2% affordable housing in perpetuity.

Councils are encouraged to undertake studies to understand the affordable housing needs of their local communities as part of their strategic planning in TOD locations. This will require councils to deliver an affordable housing contributions plan through an amendment to their Local Environmental Plan.

Impact on existing infrastructure and services

Several councils commented in their submissions that the TOD controls may result in additional impacts on existing infrastructure and services, in particular on existing road networks and community infrastructure such as libraries and open space facilities.

Regional councils raised questions about the frequency of train services, limited station accessibility, and access to essential services or commercial centres.

Infrastructure to support growth is critical, and DPHI are working closely with other NSW Government agencies like Transport for NSW, Infrastructure NSW, Health and Education as well as local councils to ensure the maintenance and delivery of infrastructure and services in TOD locations.

DPHI recommends that councils consider community infrastructure as part of their strategic planning for more housing in their local area. In the meantime, local infrastructure will continue to be funded through contributions under either s7.11 or s7.12 of the *Environmental Planning and Assessment Act 1979*, paid by developers.

Infrastructure contributions plan

Some council submissions flagged resourcing to prepare or update contribution plans in TOD locations.

DPHI recommends that councils update their contributions plans, in consultation with their local communities as part of the strategic planning to be undertaken in these locations.

Active transport

Submissions from a range of stakeholders highlighted the importance of active transport in TOD locations, and the potential to improve pedestrian and bike networks into the future.

DPHI agrees and recommends that councils consider active transport as part of their strategic planning for more housing in their local area.

Heritage

Varied feedback was received in the submissions around the TOD controls applying in heritage conservation areas (HCAs). Feedback included:

- concerns with ensuring consistency between the TOD controls and clause 5.10 Heritage Conservation of LEPs when assessing development applications (DAs) in HCAs
- concern about inconsistency between mid-rise outcomes and HCAs characterised by low-density, single dwelling lots and the potential impacts of mid-rise development on the fabric of these HCAs
- support for the TOD controls applying in HCAs, to the extent that heritage and local character remained a factor when considering developments in TOD locations and that neighbourhoods could evolve, while maintaining community character

The Heritage Council of NSW commented on the implications of the policy on existing HCAs and importance of future strategic planning in enabling change in HCAs and elsewhere. They resolved to work with DPHI to develop heritage guidance material in TOD locations.

Submissions noted that support and guidance material from DPHI would be crucial for councils, to reduce the legal conflicts and possible prolonged assessment timeframes.

DPHI listened to the feedback, and the SEPP will not contain any additional provisions regarding development in HCAs and instead clause 5.10 of the Standard Instrument Principal Local Environment Plan will continue to apply.

Applications involving heritage considerations will continue to be lodged with councils and assessed by councils. Councils are well placed to assess applications that might involve the removal of a non-contributory building to the heritage value of that area. Any new development would need to improve and enhance the heritage values of those locations.

DPHI is preparing additional guidance to support the design and assessment of developments in HCAs as part of the TOD controls.

Site selection

A range of submissions requested further information on the analysis process undertaken for site election, with some council and industry group submissions suggestions additional stations, or further tranches and the expansion of the TOD program.

Councils gave bespoke feedback on site-specific issues such as environmental constraints, impacts on local strategic planning and low opportunity yield in some locations.

DPHI has published the [Transport Oriented Development assessment criteria document](#) which is available on the Department's website. This explains the logic behind our site selection process.

DPHI have also worked closely with councils through the TOD consultation process, which resulted in a further 6 stations being added to the list of TOD locations at Cardiff, Cockle Creek, Belmore, Lakemba, Punchbowl and Woy Woy.

Precinct boundary

A range of submissions were received that requested clarity around the measurement of the 400 metres radius from TOD locations, and how that would be identified – with a clear preference for the SEPP to include maps.

Several submissions from industry groups and advocacy groups encouraged expanding the radius beyond 400m, to include more properties – highlighting suitability of an 800m radius for walkability and amenity.

There were also suggestions to measure proximity according to walking distance, rather than as the crow flies, to align with transport-oriented development objectives.

Submissions also included feedback around a potential ‘taper-down’ of density beyond the 400m to help the built-form transition from mid-rise to low-rise development types.

DPHI understands that the identification of properties that fall within and outside the SEPP needs to be clear, as does the need to consider each individual lot. The first 18 TOD locations where the Housing SEPP will come into operation in May 2024 will be mapped and will appear as a layer on the ePlanning Portal Spatial Viewer. This will provide the clarity regarding precinct boundaries which was raised in the submissions. DPHI will update the layer with future TOD locations as they are brought on-line.

Appendix A Briefing dates and record of submissions

Council name	Council staff briefing date	Councillors briefing date	Submission
Bayside Council	19 January 2024	14 February 2024	Y
Burwood Council	25 January 2024	22 February 2024	Y
City of Canada Bay Council	25 January 2024	30 January 2024	Y
City of Canterbury Bankstown	22 January 2024	6 February 2024	Y
Central Coast Council	22 January 2024	5 February 2024	Y
Cumberland City Council	19 January 2024	15 February 2024	Y
Georges River Council	23 January 2024	30 January 2024	Y
Inner West Council	31 January 2024	6 February 2024	Y
Ku-ring-gai Council	16 January 2024	24 January 2024	Y
City of Lake Macquarie	15 January 2024	5 February 2024	Y
City of Newcastle	17 January 2024	24 January 2024	Y
Penrith City Council	1 February 2024	Not requested	Y
City of Wollongong	18 January 2024	31 January 2024	Y
Willoughby Council	14 March 2024	19 February 2024	Y

Peak name	Briefing date	Submission
Planning and Professional Peaks Forum	12 December 2023 30 January 2024	N
Urban Development Institute of Australia (UDIA)	29 January 2024	Y
Urban Taskforce	31 January 2024	Y
Property Council Australia	5 February 2024	Y
Housing Industry Association	5 February 2024	N
Australian institute of Architects (AIA)	5 February 2024	Y
Planning Institute of Australia (PIA)	6 February 2024	Y
Local Government NSW (LGNSW)	7 February 2024	Y
Heritage Council of NSW	7 February 2024	Y
Shelter NSW	8 February 2024	Y
Community Housing Industry Association (CHIA)	12 February 2024	Y
Committee for Sydney	n/a	Y
WalkSydney	n/a	Y
Sydney YIMBY	n/a	Y
Building Council of Australia (BCA)	n/a	Y