

Department of Planning, Housing and Infrastructure

dphi.nsw.gov.au



NSW Government Response

Development of the Transport Oriented Development Program

January 2025



Contents

Introduction.....	3
Response to recommendations	4
Recommendation 1	4
Recommendation 2.....	5
Recommendation 3	6
Recommendation 4	7
Recommendation 5	9
Recommendation 6	10
Recommendation 7	12
Recommendation 8	13
Recommendation 9	14
Recommendation 10.....	15

Introduction

In the context of both national and NSW-specific housing challenges, the NSW Government is committed to introducing a range of reforms to increase housing supply, affordability and liveability. The NSW Government made several commitments at the 2023 state election related to housing and planning reforms, particularly rebalancing population growth around infrastructure, amending existing development plans around metro stations and streamlining the planning system.

The Transport Oriented Development (TOD) Program directly responds to these commitments, forming part of the NSW Government's plan to create more well-located homes close to transport, jobs and services and contribute to NSW's commitments under the National Housing Accord.

The NSW Government has reviewed the recommendations of the Legislative Council's Portfolio Committee No.7 – Planning and Environment *Inquiry into the development of the Transport Oriented Development Program* and thanks the Committee for their detailed review. Out of the 10 recommendations made to the NSW Government:

- Eight are supported in full; and
- Two are supported in principle.

The bulk of findings addressed the approach taken by the Department of Planning, Housing and Infrastructure (the Department) to develop and communicate the TOD Program to stakeholders, rather than the merits and outcomes of the Program.

The Committee did find that constraints outside of the bounds of the planning system are impacting the delivery of homes and encouraged the NSW Government to consider those, in particular construction costs, materials and labour.

The NSW Government's response to each recommendation is addressed below.

Recommendation 1

That the NSW Government continue to work in collaboration with local councils and key stakeholders on building community understanding of housing reforms, including the TOD Program.

Supported.

Noting the NSW Government continues to work closely with councils to deliver new planning controls in deferred TOD precincts. The Department of Planning, Housing and Infrastructure (the Department) has recently negotiated the implementation of new development standards for Banksia/Rockdale, Dapto, Woy Woy, Gosford, Berala, Canterbury and North Strathfield with the relevant councils. The Department works alongside councils every day on planning matters, in particular those relating to housing reforms, including the TOD program.

The Department responds directly via mail, email and phone to queries on the TOD and other housing programs from industry, council and community stakeholders on an almost daily basis to increase understanding of the reforms, in addition to publicly available resources on the Department's website including guidance documents and frequently asked questions.

Recommendation 2

That the NSW Government continue to work with stakeholders, including local councils and development industry representatives, to clarify how the TOD SEPP will operate alongside existing planning controls, and update the existing guidelines should there be any further uncertainty.

Supported.

Noting the Department, on behalf of the NSW Government, has already released two documents. These documents provide guidance on using the TOD planning controls and how councils can replace the TOD controls with their own strategic planning. The Department regularly engages with industry stakeholders and councils to clarify the operation of TOD controls in the context of existing planning controls, in addition to engagement with stakeholders that the Minister for Planning and Public Spaces undertakes. Where there is an emerging area that may require further clarity, the Department has committed to updating the online guidance material and issuing new guidance as required.

Recommendation 3

That the NSW Government consider evidence on drivers of housing affordability and ensure that detailed planning for the current and any future TOD precincts is tailored for specific localities and considers how the program can best promote housing supply that meets community needs.

Supported.

Noting feasibility and viability studies were considered in the NSW Government's evaluation of locations for inclusion in the TOD Program. Planning controls introduced through the TOD Program will enable more homes to be delivered in well located areas. The policy also promotes housing diversity by enabling apartment developments in locations where they may not previously have been permitted under the local controls.

The NSW Productivity Commission's report 'Building more homes where people want to live' (May 2023) found that enabling an increase in supply of new homes in high demand locations can improve affordability, helping to place downward pressure on the housing market. The Department is working with councils to tailor certain elements of the planning package to key local considerations.

The TOD Program takes into account local needs. Twelve of the thirteen councils affected by the TOD SEPP reached agreements with the NSW Government to undertake or work with the Department to do local planning in lieu of the TOD planning controls to deliver an equivalent or increased housing outcome. Councils are already successfully delivering on their agreements with local master planning underway that includes engagement with their local communities, such as in Canterbury-Bankstown, Penrith, the Inner West and Burwood.

The TOD Accelerated Precincts also consider local needs with detailed analysis done through the rezoning process, and extensive consultation during public exhibition with local communities, residents and landowners, industry and councils, to make sure that the rezonings reflected the best outcomes.

Recommendation 4

That the NSW Government develop a package of measures to address current constraints impacting on residential construction in NSW.

Supported in principle.

Noting there are constraints on residential construction not within the State's direct control such as economic feasibility and market challenges including construction costs, materials and labour. The NSW Government has already introduced a range of major reforms to increase the supply and diversity of housing and to speed up the delivery of homes. They include:

- planning, zoning and land release reforms including the TOD program, Low and Mid-Rise planning reforms and social and affordable housing reforms;
- measures to reduce development assessment timeframes and associated holding costs through the introduction of the Housing Delivery Authority which will also allow for the concurrent assessment of rezonings and development applications;
- measures to reduce unnecessary delays in the construction of new home commencements through the Housing Taskforce with NSW Government agencies responsible for resolving outstanding issues in post-consent conditions on development applications;
- faster rezoning pathways including a new State Significant Rezoning Policy, a streamlined pathway for identifying and evaluating sites considered eligible to be assessed as either a State-led or State-assessed rezoning proposal, allowing projects to be fast-tracked and a faster, simplified rezoning process for the state's housing agencies (Homes NSW, the Aboriginal Housing Office and Landcom) to speed up delivery of social and affordable housing;
- further measures to reduce development assessment timeframes including an accelerated approval pathway for developments using Pattern Book designs to be developed by the Government Architect; an updated Statement of Expectations Order 2024 which sets new benchmarks for council performance on development assessment, planning proposals and strategic planning and monitoring via a council 'league' table; and a new State Significant Development Pathway to enable faster assessments for the state's housing agencies;
- better coordinated housing supply and infrastructure delivery through reforms to the Housing and Productivity Contribution system and expansion of the Urban Development Program. In addition, significant infrastructure investment including \$520 million for infrastructure in the TOD Accelerated Precincts, \$200 million of financial incentives to councils for local infrastructure under the Faster Assessment Program, \$147.61 million under the Accelerated Infrastructure Fund Round and \$62.5 million under Round 4 of the State Voluntary Planning Agreement Program to deliver new roads, drainage and open space;
- improvements to the processing of development applications submitted to councils through investment in the Strong Start Cadetship and the Strong Start Mentorship programs to facilitate more planning staff in councils; increased access to paraplanning courses with a Diploma of Paraplanning now being run through TAFE SA, in

collaboration with DPHI and TAFE NSW; and implementing the use of Artificial Intelligence in the NSW Planning system to assist councils to speed up the assessment of development applications.

NSW Government agencies are also addressing residential construction constraints through a range of measures including:

- the Building Homes for NSW program which will deliver up to 30,000 new well-located homes close to infrastructure and transport, with amenities and work opportunities, with surplus land to be made available for housing;
- \$10 million in funding to explore and trial the use of modular housing led by Homes NSW to deliver much needed social homes for the people of NSW;
- \$65 million to Landcom to deliver build-to-rent homes to enable more long-term, diverse housing in regional markets as well as a \$450 million commitment to deliver at least 400 build-to-rent dwellings over three years under the Key Worker Build-to-Rent Program;
- \$59 million investment in the NSW Building Commission to help ensure quality home builds and renovations;
- a finance guarantee pilot to examine how the state can more directly support the housing industry to secure finance, increase the viability of housing projects and speed up the construction of new homes;
- \$16.3 million to continue fee-free training for apprentices and trainees across the state, which will fund more than 20,000 new apprentices and 19,000 trainees;
- re-opened the Big River Group Grafton timber factory following a major upgrade, to support the supply of high-quality timber products to the construction industry across NSW;
- adjusting the foreign investor surcharges from 1 January 2025 and land tax threshold indexation in 2025 to encourage more properties to be available to NSW residents and to ensure that overseas investors buying homes in NSW are also contributing to the cost of building other homes and the necessary infrastructure to support them.

Recommendation 5

That the NSW Government continue the work on a framework for affordable housing under the TOD Program.

Supported.

The NSW Government will continue to develop mechanisms that promote and facilitate more affordable housing through the planning system. This includes guidance and resources from the Department, to assist councils to implement the current affordable housing settings and work to understand future increases to the affordable housing rates affecting the TOD SEPP precincts. Increased affordable housing rates will be notified via a schedule on the Department's website.

The NSW Government's TOD Program represents the introduction of inclusionary zoning for in perpetuity affordable housing in NSW.

Within the TOD Accelerated Precincts, the NSW Government has required a minimum base rate of 3 per cent affordable housing across all new residential development within the Precincts. Key sites have then been nominated within the Precincts and will be required to provide a higher rate of affordable housing directly related to the amount of additional uplift that has been provided on that site. The requirements for affordable housing within these key sites range from 4 per cent up to 18 per cent. All affordable homes within the Accelerated Precincts must also be provided in perpetuity and managed by a registered Community Housing Provider (CHP).

Recommendation 6

That the NSW Government continue to address the broad range of issues contributing to the housing crisis, noting in particular:

- continued investment in public housing
- continued involvement of Government in delivery of different housing typologies
- maintaining design standards and building quality for apartments
- continuing progressing legislation to reform the rental market and make renting fairer for all renters
- reviewing the operation of strata title to minimise legal complexity and financial risk for apartment owners and provide for possibility of future urban renewal.

Supported.

The NSW Government is continuing to consider the broad range of issues that have contributed to the housing crisis. It is noted that:

- \$5.1 billion investment in the delivery of 8,400 new social housing dwellings across NSW in the 2024-35 Budget, which represents the largest single investment in Homes NSW in the state's history;
- the Building Homes for NSW program which will deliver up to 30,000 new well-located homes close to infrastructure and transport, with amenities and work opportunities, with surplus land to be made available for housing;
- \$1 billion to repair 30,000 Homes NSW homes to get them tenanted again;
- \$10 million in funding to explore and trial the use of modular housing led by Homes NSW to deliver much needed social homes for the people of NSW;
- \$65 million to Landcom to deliver build-to-rent homes to enable more long-term, diverse housing in regional markets as well as a \$450 million commitment to deliver at least 400 build-to-rent dwellings over three years under the Key Worker Build-to-Rent Program;
- the delivery of a NSW Pattern Book including an international design competition, which will provide easily accessible and adaptable designs for more diverse housing types in order to promote greater housing choice into the future, and the provision of an accelerated assessment pathway with the use of these designs which will mean that housing diversity can be delivered faster than ever before;
- \$59 million investment in the NSW Building Commission to help ensure quality home builds and renovations;
- Maintaining design standards for proposed developments continues to apply as guided by the Apartment Design Guide;
- The Residential Tenancies Amendment Bill 2024 (the Bill) was passed by Parliament on Thursday 24 October 2024. This Bill progresses the NSW Government's commitments to improve NSW rental laws;
- \$11.8 million was allocated in the 2024-25 NSW Budget for the Strata and Property Services Commissioner to educate owners' corporations and hold strata agents to

account, including \$3.5 million over 2 years towards the Strata Hub online platform to centralise information for those who live in or own a property in a strata scheme;

- NSW Government's allocation of \$8.4 million for the establishment of a Rental Taskforce led by the NSW Rental Commissioner; and
- New strata laws including expanded disclosure requirements for strata managers will commence from 3 February 2025.

Recommendation 7

That the NSW Government consider focusing infrastructure funding through the Urban Development Program (UDP) to areas of growth, including TOD locations, to ensure that community infrastructure and amenity needs are delivered alongside housing.

Supported.

The NSW Government has already established the Urban Development Program (UDP) to inform NSW Government priorities for infrastructure to support housing supply in areas of growth, including TOD locations.

The UDP operates in 8 regions across the State and provides a central forum for NSW Government agencies, local councils, utility providers and industry to align plans for housing and infrastructure, coordinate delivery, and resolve major roadblocks impacting supply.

The UDP will help to inform the allocation of funds collected through the Housing and Productivity Contribution, to ensure the timely and efficient delivery of State and regional infrastructure to support new and growing communities.

The NSW Government reformed infrastructure contributions as one of the first pieces of legislation through the Parliament in 2023. The creation of the Housing and Productivity Contribution and its implementation from 1 October 2023, has introduced a fair, broad base contribution rate for each new dwelling built within Greater Sydney, as well as contribution rates for development in the Hunter, Central Coast and Illawarra regions.

This reform allows the NSW Government to provide infrastructure alongside housing growth.

In the TOD Accelerated Precincts, the NSW Government has committed \$520 million for the provision of public open spaces, as well as active transport projects to build better communities and demonstrate best practice in delivering density.

Recommendation 8

That the NSW Government maintain the existing robust design and building standards throughout new housing reforms to ensure long term liveability of new developments.

Supported.

The Building Sustainability Index (BASIX) is a sustainability assessment tool and aims to reduce the environmental impact of new homes by setting minimum standards for water and energy efficiency and thermal performance. BASIX is one of the strongest sustainable planning measures across Australia.

The NSW Government increased the BASIX requirements for energy and thermal performance on 1 October 2023, with the changes to energy performance estimated to reduce emissions by around 150,000 tonnes a year. There is also a new requirement to calculate and record embodied emissions of building materials. Higher BASIX requirements will save on home energy bills over time, as better performing homes use less energy.

Both the TOD SEPP and Low and Mid-Rise Housing reforms include mechanisms to ensure existing design quality controls continue to be considered by consent authorities. This includes maintaining a requirement that relevant development under both reforms consider the Apartment Design Guide and relevant council Development Control Plan requirements (where these do not conflict with the reform provisions). The TOD and Low and Mid-Rise reforms also require adherence with the BASIX standards for residential buildings.

The NSW Government has also invested \$59 million in the NSW Building Commission to help ensure quality home builds and renovations.

Recommendation 9

That the NSW Government investigate measures to encourage the delivery of family-friendly apartments as part of its housing reforms.

Supported.

Through all of its reforms, the NSW Government aims to enable more homes and diverse housing types in well located areas close to transport, jobs, services and public open space. The Department regularly reviews the Apartment Design Guide and other planning controls and will consider opportunities to support the delivery of family friendly apartments.

The Department will undertake research to investigate planning levers to encourage different apartment types in development.

Recommendation 10

That the NSW Government:

- continue to maintain commitment to 40 per cent urban tree canopy cover across Greater Sydney by 2036
- release further guidance for local councils and industry on managing and minimising mature tree and canopy loss during development, including appropriate compensatory measures for replacement.

Supported in principle.

The NSW Government remains committed to maintaining and enhancing tree canopy in our urban spaces, aspiring to deliver 40% canopy cover across the Greater Sydney Region by 2036.

Retention of mature trees is a key part of achieving this goal, with canopy and deep soil provisions included in the TOD Accelerated Precinct urban design guides. These guides also address a range of other factors that contribute to positive urban greening outcomes including a requirement to enhance canopy across the public and private domain, canopy targets that are tailored to the nature and size of different development types and the context of each precinct, and creating and connecting deep soil zones to maximise tree planting, support healthy root development, and support trees reaching maturity.

The Department has an established program of supporting councils to plan and deliver tree canopy within their local government areas. This includes:

- The Greener Neighbourhoods Program - the Department has funded council strategic urban forestry planning, hosted ongoing workshops to facilitate knowledge-sharing and cross-council discussion, and developed the Greener Neighbourhoods Guide to assist councils developing urban forest strategies.
- Data capture and the Green Infrastructure User Interface - the Department has undertaken high-quality tree canopy, green cover, and heat data capture across the Greater Sydney Region. The Department has also developed a user interface for councils, state government, and other approved users to access, review, and analyse the data to inform green infrastructure planning.
- Reducing illegal tree removal - The Department has consulted with councils to understand issues and concerns around illegal tree clearing and is considering updates to the Biodiversity and Conservation State Environmental Planning Policy framework to increase penalties, and to strengthen and clarify the council permit system that regulates tree removal.

While compensatory measures including tree bonds are not currently being explored by the Department, this, and other interventions, can be tested with councils using the Greener Neighbourhoods Program as a forum to understand how to best support councils.