

Department of Planning, Housing and Infrastructure

# Guidance to Transport Oriented Development





# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Guide to Transport Oriented Development

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# Applying the amendment

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This guide is for people who will prepare and assess development applications under the Transport Oriented Development planning controls.

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The Transport Oriented Development (TOD) Program is part of the biggest planning reforms this state has ever seen. It will be critical to meeting the growing demand for housing and improving affordability, especially for young people and families.

We have amended the *State Environmental Planning Policy (Housing) 2021* – also known as the Housing SEPP. A new chapter 5, Transport Oriented Development, will apply new planning controls to specified lots in the mapped area around identified stations to increase housing supply.

The TOD amendment to the Housing SEPP, and subsequent conditions prescribed under clause 86A of the Environmental Planning and Assessment Regulation 2021 are referred to as the TOD amendment.

The TOD amendment was made on 24 April 2024 and **applies from 13 May 2024**.

Initially, the TOD planning controls will apply to specified lots in the mapped areas around the 18 stations in Table 1. Most of these stations will be finalised by the end of 2024. Visit the department's site for the [locations and finalisation dates](#).

This guide explains the TOD amendment, and its intent so you can prepare and assess applications under the TOD planning controls.

## Where the TOD planning controls apply

From 13 May 2024, the TOD planning controls will apply to the stations in Table 1.

Table 1. Stations included in the policy

Station	Local government area	Station	Local government area
Adamstown	Newcastle	Lindfield	Ku-ring-gai
Booragul	Lake Macquarie	Morisset	Lake Macquarie
Corrimal	Wollongong	Newcastle Interchange	Newcastle
Gordon	Ku-ring-gai	Roseville	Ku-ring-gai
Hamilton	Newcastle	Teralba	Lake Macquarie
Killara	Ku-ring-gai	Turella	Bayside
Kogarah	Bayside/Georges River	Wyong	Central Coast
Kotara	Newcastle	Cardiff	Lake Macquarie
Lidcombe	Cumberland	Woy Woy	Central Coast

**We have identified sites to which the TOD planning controls apply on maps adopted by the Housing SEPP. The maps are available on the NSW Planning Portal [Spatial Viewer](#).**

The Transport Oriented Development Sites Map will be updated regularly to reflect any lot amalgamations and land subdivisions. This will form part of the regular planning proposal process.

Where a lot contains land-use zones to which the TOD planning controls do not apply, only the portion of land that has the specific residential or employment zone will be affected by the SEPP. For example, if a property is partially zoned MU1 Mixed-use and R4 High-density Residential, only the portion of the site that is R4 High-density Residential can be developed under the TOD planning controls.

## Savings and transitional provisions

The TOD planning controls do **not** apply to development applications:

- made and not determined, on or before 13 May 2024, or
- modification applications made after 13 May 2024, if consent was granted on or before 13 May 2024.

# New development standards

## Summary of changes

Table 2. Planning controls and development standards for TOD

Feature	Zones to which changes apply	Residential flat buildings	Shop-top housing
Permissibility	R1, R2, R3, R4	✓ Yes	✗ No
	E1 (B2)	✓ Yes	✓ Yes
	E2 (B3)	✗ No	✓ Yes
Floor space ratio	Relevant zones are defined in clause 151 of the Housing SEPP	Maximum 2.5:1 *	Maximum 2.5:1 *
Building height		Maximum 22 m *	Maximum 24 m *
Lot size		No minimum lot sizes	No minimum lot sizes
Lot width		Minimum 21 m	Minimum 21 m
Active street frontages	E1 (B2)	✓ Yes	✗ No
Affordable Housing	Relevant zones are defined in clause 151 of the Housing SEPP	✓ Yes	✓ Yes

\* where council local environment plan controls are higher, they continue to apply

## Varying development standards

The above development standards in Table 2 can be varied in keeping with clause 4.6 of the Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP). The clause allows councils to grant consent to development that varies one or more development standards.

See the [Guide to Varying Development Standards](#) for more information on the requirements for preparing, assessing and determining requests to vary development standards.

## Interaction with other legislation

When determining TOD applications, councils will continue to consider the matters listed in section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). This includes:

- provisions of any other environmental planning instrument
- the likely environmental impacts of the development on the natural and built environment
- social and economic impacts in the locality

These considerations will include bushfire, flooding and biodiversity impacts. Councils will also consider the suitability of the site for the development and any submissions made in line with the EP&A Act or regulations.

Councils must consider the aims of the TOD amendment when determining a development application under section 4.15 of the EP&A Act. These aims prevail in cases where they are inconsistent with the objectives of the local environmental plan that applies to the land.

### Development control plans

Many councils have adopted DCPs and other policies (like stormwater management plans) which should be considered when preparing a development application.

Where an inconsistency arises between the provisions of the TOD amendment and another environmental planning instrument or other chapters in the Housing SEPP 2021, the TOD planning controls prevail. Figure 1 gives examples of prevailing planning controls.

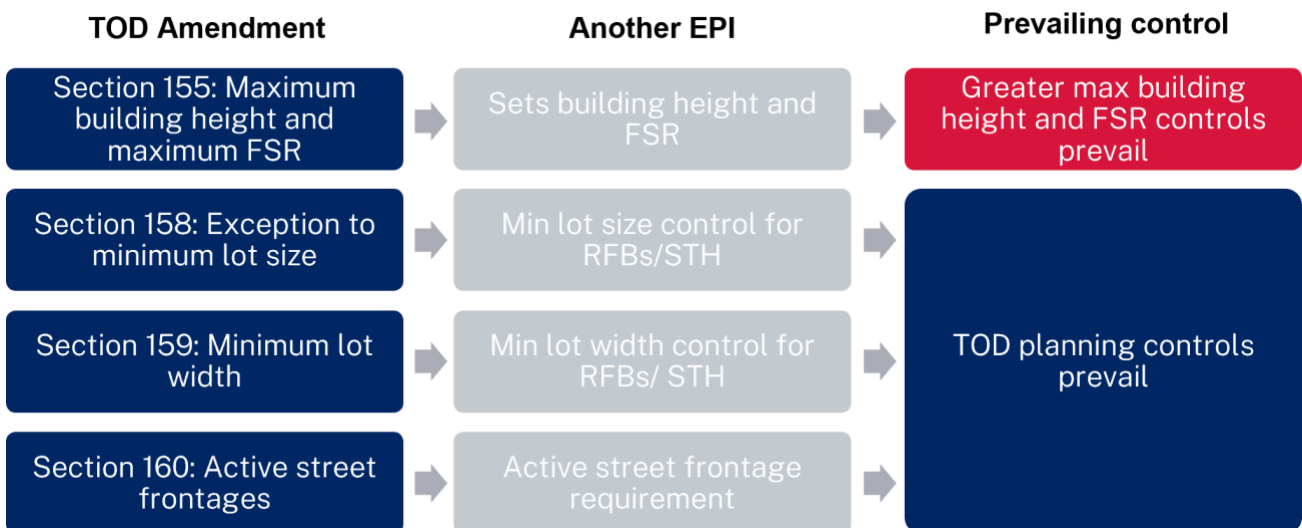


Figure 1. Schematic showing which TOD planning controls prevail over other EPI's

Key: EPI = environmental planning instrument | FSR = floor space ratio | RFB = residential flat building | STH = shop-top housing

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## Existing local development standards

A key aim of the TOD amendment is to increase housing density near planned and existing public transport. Given this, in cases where a greater height and/or floor space ratio can be achieved for land where the policy applies, the greater planning controls apply.

### Working example



Figure 2. Schematic showing which planning controls prevail when local environmental plan controls are greater than TOD planning controls

Key: FSR = floor space ratio | LEP = local environmental plan | TOD = Transport Oriented Development

As Figure 2 shows, if a local environmental plan allows a maximum floor space ratio of 5:1 and a maximum building height of 60 m, the local environmental plan controls will continue to apply to the site. Section 155 of the TOD amendment will only apply if existing maximum height and floor space ratio controls are lower than the controls allowed under the policy.

All other sections (Sections 156 to 161) in the TOD amendment will continue to apply to the land.

### Where LEPs are silent on floor space ratio or height

Where an LEP has no floor space ratio or height control, this is considered higher than the TOD planning controls. Therefore, the TOD maximum floor space ratio or maximum height do not apply to the proposed development. This will continue to allow councils to assess applications as they currently do. Where no floor space ratio or height is prescribed in an LEP the building envelope and site coverage must consider other relevant planning controls which apply to sites, including the Apartment Design Guide.

### Parking

The TOD amendment does not make changes to current parking rates. Section 148 of the Housing SEPP will continue to apply to the market housing component of the development. Car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the [Apartment Design Guide](#).



Section 157 of the Housing SEPP includes development standards on the number of parking spaces required for each affordable housing dwelling required under Section 156. If a development includes diverse housing proposed under Chapter 3 of the Housing SEPP, the relevant parking rates will apply.

### Mixed-use developments

Mixed-use development includes multiple land uses in one building. Where a proposed development includes another permissible use in addition to a residential flat building or shop-top housing building on land in a TOD location, the council can assess the merits of that use.

The 2% affordable housing calculation will be based on the total gross floor area of the building.

## Chapter 3 of the Housing SEPP: Diverse Housing

Developments proposed under Chapter 3 of the Housing SEPP will be permitted in TOD amendment locations. Certain types of diverse housing can access more floor space ratio bonuses. In the case where a residential flat building or shop-top housing is proposed, these developments utilise maximum building height, maximum floor space ratio and affordable housing provisions in the TOD planning controls.

**All other mandatory standards set out in the relevant part of Chapter 3 will apply.**

### Part 3: Co-living housing

Co-living housing is not included in the definition of a 'residential flat building' in the Standard Instrument LEP. Although co-living developments are allowed in a TOD amendment location, the TOD planning controls do not apply to this diverse housing type.

### Part 4: Build-to-rent housing

Residential flat buildings and shop-top housing can be used as build-to-rent housing in TOD locations. There are no extra floor space ratio bonuses under this part of the Housing SEPP. However, build-to-rent housing can apply more floor space ratio and added building heights set out in Chapter 2 of the Housing SEPP.

### Part 5: Housing for seniors and people with disability

Added floor space ratios apply to development proposed for seniors housing within a residential flat building or shop-top housing building.

#### Working example

Section 87(2) of the Housing SEPP allows a senior housing development involving independent living units additional floor space ratio, if the added floor space is used only for independent living units. Figure 3 gives an example of senior housing development in a TOD location which utilises this section.

Site area (m <sup>2</sup> )	Permissible FSR under TOD	FSR bonus calculation					TOD AH requirement	
		Total permissible GFA (m <sup>2</sup> )	Additional FSR	New FSR	Additional GFA (m <sup>2</sup> )	New Total GFA (m <sup>2</sup> )	TOD AH	AH GFA (m <sup>2</sup> )
1,500	2.5:1	3,750	15%	2.875:1	562.5	4,312.5	2%	86.25

Figure 3. Calculation of floor space ratio bonus for seniors living Key: AH = affordable housing | FSR = floor space ratio | GFA = gross floor area

# Amenity, design and biodiversity considerations

The TOD amendment aims to deliver more mid-rise residential flat buildings and shop-top housing around rail and metro stations. The aim is to create developments that are well designed, are of appropriate bulk and scale, and that provide amenity and liveability.

Many councils use design review panels to collect feedback on proposed developments. The NSW Government's [Local Government Design Review Panel Manual](#) provides advice on the establishment and operation of design review panels

The NSW Government and the Government Architect NSW has launched an [interactive map](#) to showcase well-designed mid-rise homes. The map showcases existing examples of mid-rise housing and highlights why good design is important for homes to add value to a neighbourhood and complement the existing heritage and surroundings.

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## Apartment Design Guide

Section 161 of the TOD amendment reinforces that residential flat buildings and shop-top housing should continue to consider the [Apartment Design Guide](#) (ADG) as referred to in Chapter 4. The ADG design principles for residential apartment development are outlined in Schedule 9 of the Housing SEPP.

See [Guide documents and case studies](#) for more information about applying the design principles to developments.

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## Active street frontages

Section 160 of the TOD amendment requires residential flat buildings in local centres to make street frontages desirable places for people to use and move through. One of the main ways designs can create such frontages is to consider the best use of spaces within entrances and lobbies. This may include:

- diverse activities and uses on the ground floor
- appropriate lighting
- avoiding blank walls at the ground level
- live/work apartments on the ground floor level.



Figure 4 Active street frontage of Blackwattle Apartments in Glebe, by Turner. Image credit Brett Boardman Photography

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## Urban greening

The Apartment Design Guide requires development applications for residential flat buildings and shop top housing to consider sustainability and landscaping. Additionally, developments that propose impacts to trees or vegetation covered by a local tree management policy will still be required to make an application to council for tree removal and pruning.

The NSW Government also recognises that quality green space and urban tree canopy contribute to community health and wellbeing. Such green infrastructure is critical to delivering liveable, sustainable neighbourhoods. It increases resilience to urban heat and improves local amenity, walkability, and mental and physical wellbeing.

The department is delivering several initiatives through the Greening our City Program. These include grant programs, partnerships, and community campaigns that are increasing shade, reducing urban heat and creating a cooler, sustainable and more resilient Sydney.

For information about the Greening our City Program, visit <https://www.planning.nsw.gov.au/policy-and-legislation/urban-greening>

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## Biodiversity and threatened species

If your proposed development impacts threatened species or their habitats, other legislative requirements for approvals, licences, permits and authorities relevant to threatened species etc. still apply.

The NSW Planning framework for assessment of the impacts on biodiversity and threatened species is covered under many acts, instruments, regulations and policies, which the TOD planning controls do not change. Legislation includes:

- the Biodiversity Conservation Act 2016 (including threatened species)
- Part 5A of the Local Land Services Act 2013
- the Native Vegetation Act 2003
- parts of the National Parks and Wildlife Act 1974.

Where relevant, a proposed development application must consider if it is likely to significantly affect a threatened species. In such instances, a proposed development application must be accompanied by a Biodiversity Development Assessment Report. Applicants should also determine whether the development may exceed the [biodiversity offset scheme](#) threshold.

The TOD Planning Controls do not apply to Crown Land including National Parks or any Conservation or Recreation Zones. Further information relating to biodiversity and threatened species which may need to be considered as part of a development application can be found at [Environment and Heritage](#).



# Heritage

Housing supply and heritage values are not mutually exclusive. They can and do co-exist successfully across NSW.

While the TOD planning controls do apply in heritage conservation areas (HCAs), they do not not apply to land that:

- contains a State Heritage Register listed item (which will continue to be protected under the *Heritage Act 1977*), or
- contains a local heritage item, or
- contains an Aboriginal object, or
- is within an Aboriginal place of heritage significance, or
- archaeological sites.

The Heritage Council of NSW support the exclusion of state and locally listed heritage items from the TOD planning controls, and for applications involving heritage considerations to continue to be lodged with and assessed by councils.

Understanding the heritage values of a heritage conservation area before deciding on a proposed development scope or type is key to success. If you are proposing a TOD within a heritage conservation area, we recommend that you get input from an appropriately qualified and experienced heritage professional.

## Heritage conservation in the Standard Instrument LEP

The *Environmental Planning and Assessment Act 1979* (EP&A Act) continues to provide the statutory framework for managing development within a heritage conservation area in NSW. Section 4.15 of the EP&A Act triggers the need for a consent authority to consider heritage provisions in a council's local environmental plan, including clause 5.10 Heritage Conservation as well as any extra local heritage controls included in a development control plan.

Councils often include heritage controls in their development control plans.

Heritage controls differ between councils but typically address matters that supplement the operation of clause 5.10, such as building form and materials. They should complement the provisions of the local environmental plan.

## Development applications in heritage conservation areas

Any new apartment buildings proposed in an HCA should be appropriate to the context, and build upon the features of the HCA, whilst delivering increased housing density.

Applicants must consider how their proposed development will align with the existing fabric of the HCA in which the development is located. Information on infill developments will be outlined in a local council's development control plan and accompanying HCA character statement. These documents will set out design elements such as bulk and scale, front and side setbacks, interface with the public domain and materiality that must be considered in the design of the proposed building.

Applicants may be required to submit a heritage impact statement (HIS) to accompany the development application. The HIS will outline how the proposal impacts adjoining and surrounding properties in the HCA. It will also need to demonstrate how the proposal will be compatible with the streetscape and appropriate to the heritage context.

Consent authorities will still be required to assess the application under clause 5.10 of their LEP. The clause 5.10 assessment will determine if the proposed new development satisfactorily addresses the significance of the HCA and any adjoining items, and will need to determine that the HCA is not adversely affected by the proposed infill development. It is intended that the consent authority considers the character of the HCA and have regard to aim of increased housing density, and change in built form as the area transitions over time.

Engagement with the relevant local council should happen early in the planning and design process. This will help navigate the approval process. It will also help manage expectations about the acceptable types of impacts the proposed development will have on the location's heritage significance.

## Design guidance for developments with heritage considerations

Guidance on infill development in heritage locations is available. We encourage local councils to keep using these guidelines when assessing development applications.

The Heritage Council of NSW and the Government Architect NSW have collaborated on a guide to help industry understand how we integrate heritage with future development and design. The guide outlines the steps needed to ensure our heritage places are conserved, maintained and enhanced through good design, while realising good development outcomes. Consult the [Design Guide for Heritage](#).

The following images from Case studies of the Apartment Design Guide illustrate the design of mid-rise housing with heritage considerations.



Figure 5 (above and top right) Retention of heritage facade at The Gantry by Bates Smart. Image: Martin Mischkulnig



Figure 5 Factory facade before. Image: Bates Smart



Figure 6 Factory facade after. Image: Brett Boardman

# Affordable Housing

The increase in housing capacity at the TOD locations is a key opportunity for the government to secure affordable housing at these well-located sites, now and into the future.

The affordable housing requirements for TOD locations are set out in Chapter 5 of the Housing SEPP and Section 86A of the EP&A Regulation 2021.

## **Chapter 5 Housing SEPP**

Chapter 5 requires that in TOD locations residential flat buildings and shop-top housing developments with a total gross floor area\* equal to or greater than 2,000 m<sup>2</sup> must provide at least 2% affordable housing and must be managed by a registered Community Housing Provider (CHP) in perpetuity.

## **EP&A Regulation**

The Regulation amendment imposes conditions on development consent for affordable housing provided in residential flat buildings and shop top housing in TOD Areas.

\*Total development gross floor area includes residential and commercial uses

The current rate of affordable housing will be increased as outlined in a future published schedule.

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## Application of the TOD planning controls

Developments in TOD locations with total gross floor area equal to or greater than 2,000 m<sup>2</sup> are required to contribute Affordable Housing.

The 2% affordable housing component must be made up of at least one or more units, based on average apartment sizes stated in the Apartment Design Guide. The affordable housing contribution must be provided on site.

For example, for a development with a gross floor area of 2,000 m<sup>2</sup>, a 2% contribution rate would equate to a dwelling size of at least 40 m<sup>2</sup>. This is equivalent to a studio based on average apartment sizes in the Apartment Design Guide.

Where the proposed development is made up of more than one building on the site, the affordable housing component will be calculated based on the entire gross floor area of the development. For example, if there are 3 buildings on a site, each with a gross floor area of 800 m<sup>2</sup>, the 2% affordable housing will be calculated on a total gross floor area of 2,400 m<sup>2</sup>.

Developments with a gross floor area of less than 2,000 m<sup>2</sup> are not required to provide an affordable housing component.

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## Interaction with other affordable housing provisions

### Local requirements for affordable housing

Where a council has an existing affordable housing contribution scheme in place (AHCS), any monetary contributions or dedications of land for the purpose of providing affordable housing on land to which the scheme applies must be provided in accordance with the rates specified in the AHCS.

### In-fill affordable housing under the Housing SEPP

To take advantage of incentives available under Division 1, Part 2, Chapter 2 of the Housing SEPP of floor space ratio and building height, developments in TOD locations will need to provide at least 10% of affordable housing (for development to which sections 16 and 18 applies) or an amount at least 50% or between 20%-50% (for development to which section 17(2)(b) applies) for 15 years. The 2% affordable housing required under TOD planning controls is in addition to the affordable housing provided under the Housing SEPP.

The incentives of floor space and height can be calculated on the maximums applied under the TOD planning controls.

FSR bonuses available across the various divisions of the Housing SEPP are capped at 130% of the maximum permissible FSR under the local EPI. This means that where a development includes multiple housing types under the Housing SEPP, the bonuses available cannot be added together to exceed 130% of the maximum permissible FSR, as per section 12A of the Housing SEPP.

In-fill affordable housing developments in TOD locations may be eligible to be determined under a State significant development pathway, if the residential part of the development meets the threshold for capital investment value.



### Working example

To calculate the new total gross floor area, the additional floor space ratio is added to the permissible floor space ratio under the TOD planning controls. The TOD affordable housing component must be provided based on the new total amount of gross floor area.

The infill affordable housing component is to be provided for 15 years.

In addition, the TOD amendment affordable housing component of at least 2% is to be provided in perpetuity.

Refer to Figure 6 for an example.

Site area (m <sup>2</sup> )	Permissible FSR under TOD	Infill AH Chapter 2 of Housing SEPP					Infill AH requirement		TOD AH requirement		Resulting market housing (m <sup>2</sup> )
		Total permissible GFA (m <sup>2</sup> )	Additional FSR	New FSR	Additional GFA (m <sup>2</sup> )	New Total GFA (m <sup>2</sup> )	Minimum AH component	Affordable housing GFA (m <sup>2</sup> )	TOD AH	AH GFA (m <sup>2</sup> )	
1000	2.5:1	2,500	30%	3.25:1	750	3,250	15%	487.5	2%	65	2,697.5
650	2.5:1	1,625	30%	3.25:1	487.5	2,112.5	15%	316.9	2%	42.25	1,753.35
							<i>To be used for AH for 15 years</i>		<i>Dedication in perpetuity</i>		

Figure 6. Affordable housing calculation based on TOD planning controls and and infill affordable housing incentives

Key: AH = affordable housing | FSR = floor space ratio | GFA = gross floor area

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## Regulation of the requirement for affordable housing

The TOD amendment to the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) imposes conditions of consent and for affordable housing in residential flat buildings and shop top housing in TOD locations.

Section 86A includes conditions of development consent, including that:

- the floor area to be used for affordable housing is to be managed as such in perpetuity, and
- that the affordable housing is managed by a registered CHP, who must apply the Affordable Housing Guidelines, and
- that notice of a change in the registered CHP who manages the affordable housing must be given to the Registrar of Community Housing and the consent authority no later than 3 months after the change.

The amendment also includes conditions to be met before an an occupation certificate is granted. These include:

- a restriction against the title of the property relating to the development must be registered, and
- evidence of an agreement with a registered CHP for the management of the affordable housing must be given to the Registrar of Community Housing, and
- evidence that both conditions have been met be given to the consent authority.