

3.2. Build To Rent Planning Regime

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ATTACHMENTS:

1. Att1 - Council submission to proposed Housing Diversity SEPP [3.2.1 - 3 pages]
2. Att2 - SEPP Amendment (Build-to-rent Housing) 2021 [3.2.2 - 8 pages]

PURPOSE:

To advise Council of recent changes to the planning system to allow the delivery of “Build to Rent” housing and its likely implications, particularly in the North Sydney CBD.

EXECUTIVE SUMMARY:

In 2018, the State Government commenced work on policy changes to make it easier to deliver social housing with a particular emphasis on delivering “build to rent” (BTR) dwellings. BTR development generally comprises the provision large-scale, purpose-built rental housing that is held in single ownership and professionally managed and offering the potential to provide more rental housing choice.

New tax incentives were legislated in mid-2020, giving a 50% concession on land tax for BTR housing up until 2040 where delivered by private consortia. This has been recently followed by amendments made to the planning system on 12 February 2021, to minimise impediments to the delivery of this form of development.

The new BTR housing provisions:

- allow for development of BTR housing containing more than 50 dwellings on any land where residential flat buildings, multi dwelling housing or shop top housing is permitted and within the *B3 Commercial Core*, *B4 Mixed Use* and *B8 Metropolitan Centre* zones;
- prevent residential subdivision of BTR developments for a minimum of 15 years in all instances, except within the *B3 Commercial Core* zone where the entire development cannot be subdivided into separate lots in perpetuity;
- require a consent authority to be satisfied that a BTR housing development in the *B3 Commercial Core* zone will be readily capable of conversion to commercial premises;
- application of car parking rates;
- apply a council’s height and FSR standards;
- support the flexible application of the Apartment Design Guide; and
- introduce a State Significant Development (SSD) pathway for BTR housing developments.

All forms of residential development are currently prohibited in the *B3 Commercial Core* zone, under North Sydney Local Environmental Plan (NSLEP) 2013. Council has prohibited residential development within the commercial core of the North Sydney CBD for approximately 20 years to preserve the economic integrity of the Centre and ensure its ongoing economic employment role. The introduction of residential development not only reduces the capacity to deliver employment floor space, but it introduces new constraints (i.e. privacy, views, overshadowing etc) to future commercial development and undermines the prestige of the CBD.

This change in policy position is also contrary to the objectives and outcomes of Direction 1.1 – Business and Industrial zones to the s.9.1 Ministerial Directions which seeks to preserve commercial floorspace and ensure viable centres. It is also contrary to some of the Objectives, Strategies, Actions of the Sydney Region and North District Plans. In particular, it does not “*grow jobs in the centre [North Sydney CBD] and maintain a commercial core*”. This in turn undermines the significant level of work undertaken by Council in preparing its now endorsed Local Strategic Planning Statement, which aligns with the Regional and District Plans. Furthermore, this change is of such significance, it is also shared by neighbouring councils, Local Government NSW and the Planning Institute of Australia. In this context, the policy change is strongly opposed.

FINANCIAL IMPLICATIONS:

It is unknown what the potential financial implications for this policy change will be. However, it is likely to have some level of impact of future Council general rate revenue due to a change in land use.

RECOMMENDATION:

1. THAT Council write to the Minister for Planning and the Planning Secretary of the Department of Planning and Environment expressing its strong objection to the recent amendments to State Environmental Planning Policy (Affordable Rental Housing) 2009 to permit “Build-to rent” housing in the *B3 Commercial Core* zone based on the reasons outlined in this report. In particular, that this change undermines significant strategic planning work undertaken by Council in addressing the desired outcomes of the State Government’s own Regional and District Strategic Plans.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

2. Our Built Infrastructure

2.1 Infrastructure and assets meet community needs

2.2 Vibrant centres, public domain, villages and streetscapes

3. Our Future Planning

3.1 Prosperous and vibrant economy

3.2 North Sydney CBD is one of NSW's pre-eminent commercial centres

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

BACKGROUND

In July 2018, the NSW State Government announced its plans to introduce a “build-to-rent” (BTR) model to increase housing supply by seeking consortia to fund dedicated long term rental housing.

On 11 August 2020, the NSW State Government assented to the commencement of a suite of property tax related legislative changes to assist with providing more housing options and greater certainty for renters, whilst boosting construction and supporting jobs during the COVID 19 recovery. With respect to the delivery of BTR housing, the legislative changes sought to reduce the amount of land tax payable by 50% on the BTR component of a development and reductions on stamp duty up until 2040.

Between 29 July and 9 September 2020, the Department exhibited an Explanation of Intended Effect (EIE) for a proposed new Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP) that:

- introduces new definitions for build-to-rent housing, student housing and co-living;
- amends some state-level planning provisions, particularly for boarding house and seniors housing development;
- amends some state-level planning provisions to support social housing developments undertaken by the NSW Land and Housing Corporation (LAHC) on government-owned land; and
- consolidates three housing-related SEPPs
 - State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP);
 - State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004;
 - State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes).

Due to workloads and lack of time to formally report the matter to Council, Council staff lodged an unendorsed submission to the Department of Planning, Industry and Environment (DPIE) outlining its concerns with the EIE (refer to Attachment 1). With respect to the proposed BTR housing provisions, whilst it acknowledged and supported the need to deliver more social housing, Council strongly objected to achieving this by:

- Permitting BTR housing as mandated use in the *B3 Commercial Core* zone; and
- Any potential provisions to override Council's minimum non-residential floorspace controls in the *B4 Mixed Use* zone.

The justification for these objections were that the proposal as exhibited would weaken and potentially undermine the commercial/employment base of the *B3 Commercial Core* zoned centres of North Sydney and St Leonards. Furthermore, the unique approach to create jobs growth within the *B4 Mixed Use* zone in St Leonards/Crows Nest, will also be compromised as a result of the proposal.

It was further emphasised that the delivery of social housing is fundamentally not a land use planning problem. In terms of permissibility, built form and land use BTR housing can be developed now in the vast majority of zones (i.e. the *R3 Medium Density Residential*, *R4 High Density Residential* and *B4 Mixed Use* zones) and the State Government was requested to consider whether other incentives can be created for the delivery of this product.

The DPIE acknowledged that more than 270 written submissions were received in response to the exhibition of the EIE, of which more than 120 included comments on BTR housing.

In response to COVID initiatives to stimulate the economy, the State Government commenced the staged implementation of the proposed Housing Diversity SEPP with a focus on delivery of social housing first.

On 18 December 2020, the ARH SEPP was amended (Phase 1) to remove impediments to the delivery of social housing by the State Government. This has now been followed by additional amendments to the ARH SEPP on 12 February 2021 (Phase 2) to facilitate the delivery of social and affordable housing by private consortia (i.e. BTR housing). The remainder of the proposed Housing Diversity SEPP proposal (Phase 3) are to be addressed in the coming months.

This report outlines the implications of the February 2021 amendments to allow BTR to occur on a broad scale.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

1. What is “Build to Rent” housing?

It is an established housing product in the UK and the US, which has the potential to support and provide a better housing experience for the growing proportion of renters in NSW. BTR housing offers increased security of tenure, more choice, professional property management and higher quality places to live.

An established BTR sector has the potential to provide wider benefits to housing supply and affordability by creating a more stable housing supply pipeline that is less affected by market cycles. It may also expand the property industry’s funding base and create new sources of employment.

Following the delivery of early BTR developments in NSW, particularly in Greater Sydney, the property industry identified some challenges that could be addressed through government intervention, including adjusting policy and tax settings. In response to the property industry’s concerns, the NSW Government has recently implemented new tax concessions and amended the planning system to remove impediments to the delivery of BTR housing.

2. New planning controls

On 12 February 2021, amendments were made to the ARH SEPP to enable BTR developments to be approved.

This involved the insertion of Division 6A (refer to Attachment 2), a completely new division, into the ARH SEPP. In summary, the new controls:

- Enable BTR housing to be permissible with development consent in:
 - Any zone where multi-dwelling housing, residential flat buildings, shop top housing are permissible under an environmental Planning Instrument (i.e. NSLEP 2013);
 - The *B3 Commercial Core*, *B4 Mixed Use* and *B8 Metropolitan Corridor* zones.
- Limit the granting of development consent of BTR housing, unless:
 - The development contains at least 50 BTR dwellings;
 - All BTR dwellings are located on the same lot of land;
 - The site is not subdivided into separate lots, unless 15 years has elapsed since the issuance of an Occupation Certificate for the BTR housing in any zone other than the *B3 Commercial Core* zone, where subdivision is not permitted in perpetuity.
 - It can be demonstrated that BTR dwellings on land in the *B3 Commercial Core* zone can be converted back to a commercial use.
 - In the instances where SEPP 65 applies:

- The design criteria for private open space, ancillary storage and apartment mix as set out in the Apartment Design Guide are flexibly applied;
 - Give additional consideration to shared residential amenities; variety in dwelling mix and ability for residents to relocate within the development.
- Where proposed in a Business zone (i.e. the *B1 Neighbourhood Centre*, *B3 Commercial Core* or *B4 Mixed Use* under NSLEP 2013), that the ground level/s of the building are adequately activated with non-residential uses.
- The Apartment Design Guidelines has been considered for any future subdivision of BTR dwellings.
- Requires applications for BTR developments to comply with:
 - Any building height controls under an applicable environmental planning instrument (e.g. NSLEP 2013);
 - Any density or scale (FSR) controls under an applicable environmental planning instrument (e.g. NSLEP 2013);
 - Parking controls under a council's DCP or 0.5 spaces per dwelling, whichever is the lessor.
- Ensure that contributions towards affordable housing are still applied to a BTR development if required.

In addition, State Environmental Planning Policy (State and Regional Development) 2001 was amended on 12 February 2021 to identify when BTR is to be classified as “State Significant Development” and thereby require the development application to be assessed and determined by the Minister for Planning, and in some limited instances the Independent Planning Commission.

The types of BTR applications that are deemed to be “State Significant” include:

- Must be permitted under the ARH SEPP;
- The capital investment value must be greater than:
 - \$100 million within the Greater Sydney Region; or
 - \$50 million in any other location in the state.
- The BTR tenanted component of the proposed development must be greater than 60% of the capital investment value (i.e. the proposal could be a mixed use development);
- If proposed within the *B3 Commercial Core* zone, and the development does not include “prohibited development” land uses, with the exception of residential flat buildings, multi dwelling housing or shop top housing.

3. Implications

3.1. Permissibility

The recent amendments to the ARH SEPP now permit BTR housing in the following zones under NSLEP 2013:

- *R3 Medium Density Residential* (by virtue of multi dwelling housing being permissible in the zone);
- *R4 High Density Residential* (by virtue of multi dwelling housing, residential flat buildings and shop top housing being permissible in the zone);
- *B1 Neighbourhood Centre* (by virtue of shop top housing being permissible in the zone)
- *B3 Commercial Core* (by virtue of the ARH SEPP overriding the residential prohibition in NSLEP 2013) multi dwelling housing, residential flat buildings and shop top housing being permissible in the zone);
- *B4 Mixed Use* (by virtue of residential flat buildings and shop top housing being permissible in the zone);
- *IN2 Light Industry* (by virtue of multi dwelling housing being permissible in the zone).

No objection is raised with regard to allowing BTR where residential development is currently permitted, as such development will be required to comply with the relevant built form controls applying to the permissible residential built form (e.g. if medium density housing is permitted, the BTR development will be required to comply with built form controls for medium density housing).

Given the need to deliver a minimum of 50 BTR dwellings in a single development, it is highly unlikely that such development will be delivered within the *R3 Medium Density Residential*, *B1 Neighbourhood Centre* and *IN2 Light Industrial zones* in the LGA. This is due to the generally fragmented ownership of small lots and restrictive height controls (generally 8.5m and 10) in these zones. It is more likely that such development will occur in the remaining zones.

The biggest implication will result from the permitting of residential development within the *B3 Commercial Core* zone where such development is currently prohibited. This aspect is contrary to Council staff's position in response to the draft proposal.

It is acknowledged that additional restrictions are imposed on BTR housing when undertaken within the *B3 Commercial Core* zone, including:

- Not being able to subdivide the individual BTR dwellings in perpetuity;
- The BTR housing component to be designed in such a way, that the space can be converted to commercial purposes in the future; and
- Ensuring street activation, with non-residential uses predominantly featuring at the ground floor.

Despite the inclusion of these additional restrictions, it is highly unlikely that once constructed, the space will ever revert back for non-residential purposes. There is nothing to prevent the owner of such a site, once approval has been granted, to submit a planning proposal requesting an amendment to Council's LEP to permit unrestricted residential development on that site in perpetuity. Such a request would be based largely on the premise that the site is currently being used for residential purposes and that its continued use will not result in any additional adverse impacts. This then places a further strain on Council's ability to deliver employment

floorspace, to meet State imposed employment targets, especially in centres which are constrained to grow laterally, such as North Sydney.

The North Sydney CBD is a relatively small (at approximately 32ha) in comparison to other major centres within Greater Sydney, but is economically robust CBD with traditionally low vacancy rates and a high level of sustained commercial interest. Since 2003, Council has had in place a *B3 Commercial Core* zone (affecting approximately 16ha of developable land), to ensure that it can deliver sustainable levels of employment floor space to meet state job targets consistent with the relevant Regional and District plans over time. This has been achieved by a combination of favourable economic conditions and Council interventions. Perhaps the most significant of these interventions has been the continued prohibition of residential development in the *B3 Commercial Core* zone during a long period of very robust and sustained residential growth throughout Sydney. Residential development within the CBD has and continues to be, considered a threat to the economic viability Council's planning strategies. Residential development has been carefully located to the periphery of the CBD within the *B4 Mixed Use* zone (also affecting approximately 16ha of developable land), which provides ample opportunities for high density residential development which have existed and continue to be taken up by the market.

Whilst it is sometimes argued that residential development can add life and vibrance to a CBD, the North Sydney CBD is simply too small to sustain such development without undermining the viability of the centre as an economic and commercial hub of the highest status as outlined under the Regional, District and Local Strategic plans.

Prior to the 1990's, Milsons Point was largely a commercial centre. However, following changes to the planning controls in the 1990s to allow mixed use development, the area's character changed so significantly to the point that commercial floor space now accounts for a very small proportion of total floor space in that precinct. As a result, the precinct is a largely dormant one with very little of the life and invigoration that had originally been predicted when the planning controls were amended.

Unlike the City of Sydney with its relatively vast CBD, the North Sydney CBD is a very constrained geographically that contains a *B3 Commercial Core* zone as a chief driver of retaining and enhancing the employment character of the centre. The *B4 Mixed Use* zone which has a very wide application throughout the North Sydney LGA, including on the periphery of both the North Sydney CBD and St Leonards, provides sufficient capacity to deliver BTR housing.

There are also even smaller pockets of *B3 Commercial Core* zoned land in Crows Nest and St Leonards, which have the ability to have any meaningful delivery of commercial floorspace removed.

The introduction of residential development into a commercial setting also introduces a very different set of planning considerations when assessing development applications nearby. These include overshadowing, loss of views and spatial separation issues. Because residential amenity is not otherwise an issue, commercial development within the core of the CBD is devoid of such considerations which adds certainty to the investment/development process for such development.

Another major consideration is the prestige and corporate identity associated with investment decisions in commercial centres like North Sydney. The notion of adjacent residential development with balconies and domestic activities, has the potential to detract from this. The clustering and agglomeration benefits of a CBD like North Sydney may be eroded if BTR development begins to take advantage of the new provisions.

It should be noted, that Council's views on objecting to the permitting of residential development in the *B3 Commercial Core* zone is also shared and supported by adjoining councils and the Local Government NSW and the Planning Institute of Australia, who continually advocate for a best practice approach to planning.

3.2. Strategic Context

Whilst technically not applicable, the recent amendment to the ARH SEPP is contrary to the desired outcomes of *Direction 1.1 – Business and Industrial* zones to the Section 9.1 Ministerial Directions, which are to be considered when preparing planning proposals. The Direction's objectives are to:

- (a) *encourage employment growth in suitable locations,*
- (b) *protect employment land in business and industrial zones, and*
- (c) *support the viability of identified centres.*

One of the key mechanisms to ensure these objectives can be achieved is the direction to:

not reduce the total potential floor space area for employment uses and related public services in business zones,

By permitting BTR housing in *B3 Commercial Core* zone it has the potential to significantly reduce the total amount of achievable employment floorspace which has been established to meet employment targets set by the State Government. Whilst the DPIE is not technically required to address the Ministerial Directions for the preparation of SEPPs or their amendment, it is questioned why the DPIE has ignored its own directions.

There is currently no information on the DPIE's website advising how it determined its position in relation to the adopted BTR provisions. Council staff had sought to obtain this information from the DPIE prior to reporting to Council without success.

The current absence of the justification for implementing this aspect of the BTR provisions makes it difficult to understand the DPIE's logic in pursuing the adopted provisions.

Council has recently had its Local Strategic Planning Statement (LSPS) endorsed by the Greater Sydney Commission to deliver the desired outcomes of the State prepared Sydney Regional Plan (A Metropolis of Three Cities) and North District Plan. The Regional and District Plans set out employment targets that Council is to meet over the next 20 years. Council has demonstrated through its LSPS that the employment targets are to be met predominantly through its prohibition of residential development in *B3 Commercial Core* zone. This is consistent with the Objectives, Strategies, Actions of the Regional and District Plans

upon which Council's LSPS is informed. In particular, the Harbour CBD is to be made stronger and more competitive by growing economic development in the North Sydney CBD to "grow jobs in the centre and maintain a commercial core". For the reasons already outlined in Section 3.1 to this report, the recent amendments will significantly compromise the ability to meet the State Government's own Strategic goals and undermine Council's own work in addressing these goals.

3.3. Non-residential floorspace requirements within the B4 Mixed Use zone

NSLEP 2013 contains minimum non-residential floorspace ratio controls within its *B4 Mixed Use* zone. The purpose of these controls are primary to ensure appropriate activation of streets and to assist in meeting employment floorspace targets set at the Regional and District Strategic Plan levels.

There does not appear to be a provision within the BTR amendments that specifically allow developers to avoid compliance with the non-residential FSR controls under NSLEP 2013. However, potential may exist for developers to try and challenge the application of the non-residential FSR control, by virtue of clause 41F(5) which states:

in the event of an inconsistency between this clause and a local environmental plan or a development control plan applying to the land, the plan prevails to the extent of the inconsistency.

It could be argued that by merely meeting the street activation control under Clause 41F of the ARH SEPP, any requirement to provide non-residential floorspace beyond the ground floor level is not required to be complied with. Whilst Council staff do not believe that NSLEP 2013's non-residential floorspace ratio controls are inconsistent with the ARH SEPP, it could create additional pressure on delivering high levels of employment floor space as anticipated in North Sydney and St Leonards.

3.4. Review

The DPIE's "Frequently Asked Questions" states that:

Within 24 months of the introduction of the BTR housing amendments, the department will review the provisions to ensure they are functioning as intended.

However, there does not appear to be a corresponding review mechanism built into ARH SEPP, apart from the standardised review clause at Clause 53 of the SEPP, which applies to the entire SEPP. Given the entire SEPP is currently going through a review process, the next one could be 5 years away. To ensure greater certainty, the SEPP should be further amended such that Division 6A to the SEPP within 2 years of its commencement.

4. Conclusion

In light of the significant issues arising from the recent amendments to the ARH SEPP to enable greater take up of BTR housing, it is recommended that Council write to the Minister for Planning outlining its disappointment with these amendments. In particular, the letter should request that the ARH SEPP be further amended to:

- remove the ability to permit BTR development within the *B3 Commercial Core* zone, if currently prohibited by an environmental planning instrument, due to its ability to significantly undermine the delivery of employment targets as set out in Regional and District Strategic Plans; and
- require the review of Division 6A to the ARH SEPP within 2 years of the commencement of this Division.

N O R T H S Y D N E Y C O U N C I L



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Department of Planning, Industry and Environment
Submission via website

8 September 2020

Dear Sir/Madam,

RE: Housing Diversity SEPP EIE

Thank you for the opportunity of making a submission to the Housing Diversity SEPP Explanation of Intended Effects (EIE).

Given current workloads and deadlines associated with this Housing Diversity SEPP, this submission has not been endorsed by Council but is based on current planning policy at North Sydney Council. Council's main issue relates to the Build to Rent (BTR) provisions outlined in the proposed new SEPP provisions.

General

The BTR provisions in the Housing Diversity SEPP EIE are described as "*purpose-built rental housing, held in single ownership and professionally managed. It is designed to attract institutional investment and provide for a more stable rental sector*". This type of housing is proposed to be a mandated permissible use in various zones including the B3 - Commercial Core zone. Further, it is proposed "*that BTR housing would be assessed as State significant development (SSD) where the development has a capital investment value of \$100 million or more*".

North Sydney Council is fundamentally opposed to this approach as it will weaken and potentially undermine the commercial/employment base of the B3 zoned centres of North Sydney and St Leonards. The unique approach to create jobs growth within the B4 zone in St Leonards/Crows Nest, will also be compromised as a result of this proposal. This is described in more detail below.

The North Sydney CBD

The North Sydney CBD is a relatively small but economically robust CBD with low vacancy rates and a high level of sustained commercial interest. Since 2001, Council has had in place a B3 - Commercial Core zone, to ensure that it can deliver sustainable levels of employment floor space to meet state job targets consistent with the relevant Regional and District plans over time. This has been achieved by a combination of favourable economic conditions and Council interventions. Perhaps the most significant of these interventions has been the continued prohibition of residential development in the B3 zone during a long period of very robust and sustained residential growth throughout

Sydney. Residential development within the CBD has and continues to be, considered a threat to the economic viability Council's planning strategies. Residential development has been carefully located to the periphery of the CBD within the B4 zone, which provide ample opportunities for high density residential development which have existed and continue to be taken up by the market.

Whilst it is sometimes argued that residential development can add life and vibrance to a CBD, the North Sydney CBD is simply too small to sustain such development without undermining the viability of the centre as an economic and commercial hub.

Milsons Point at one point in the 1990s and early 2000's for example, was largely a commercial centre. The planning controls allowed mixed use development which over time, overwhelmed commercial activities to the point that commercial floor space now accounts for a very small proportion of total floor space in that precinct. As a result, the precinct is a largely dormant one with very little of the life and invigoration that had been predicted when the planning controls were amended.

Unlike the City of Sydney with its relatively vast CBD, the North Sydney CBD is a very constrained geographical area that contains a B3 zone as a chief driver of retaining and enhancing the employment character of the centre. The B4 zone which has a very wide application throughout the North Sydney LGA, including on the periphery of both the North Sydney CBD and St Leonards, provides sufficient capacity to deliver this type of housing.

It is noted that there are some limitations being placed on the BTR development type (e.g. removing the ability to strata subdivide). However, once the property is built and the ability for it to be sold within 15 years, there would be pressure to rezone that land in the future to continue the residential use of the land further placing strain on Council's ability to deliver employment floorspace, especially in centres which are constrained to grow laterally, such as North Sydney.

Council currently has a very centrally located residential building in Berry Street (the *Beau Monde*) which introduces a very different set of planning considerations when assessing development applications nearby. These include overshadowing, loss of views and spatial separation issues. Because residential amenity is not otherwise an issue, commercial development within the CBD is devoid of such considerations which adds certainty to the investment/development process for such development.

Another major consideration is the prestige and corporate identity associated with investment decisions in commercial centres like North Sydney. The notion of adjacent residential development with balconies and domestic activities, has the potential to detract from this. The clustering and agglomeration benefits of a CBD like North Sydney may be eroded if BTR development begins to take advantage of the proposed new provisions.

St Leonards

The St Leonards/Crows Nest 2036 Plan was released on 29 August 2020. It identifies the planned creation of 16,500 new jobs over the next 20 years.

Employment retention and generation is a major theme of the 2036 Plan. The three Councils that participated in the Plan preparation process with DPIE, consistently raised employment as a major issue. This is particularly relevant given that on the whole, the

Plan seeks to achieve the bulk of this growth within mixed use buildings. The ambitious targets rely on a building typology that has not traditionally delivered significant numbers of jobs in Sydney. This jobs growth will be achieved by dictating minimum non residential floor space ratios.

In terms of development feasibility and buildability, there is a high likelihood that proponents may nominate BTR apartments in lieu of the minimum commercial floor space that would otherwise be required to be accommodated on site. Developers have often argued that the quantum of minimum non-residential floor space required to be delivered in the precinct can detract from the feasibility of mixed use developments in St Leonards.

In St Leonards, where the employment land use character of the place has been changing for some years, this proposal represents a real risk to the jobs creation objectives of the 2036 Plan and one that should be avoided. It has the potential to undermine the long term economic/employment role of St Leonards and instead, create a more residential precinct with the real prospect that ambitious jobs targets remaining unrealised.

Finally...

Whilst the general thrust of creating more semi-permanent rental product is supported, it is fundamentally not a land use planning problem. In terms of permissibility, built form and land use BTR can be developed now. Then NSW Government should consider whether other incentives can be created for the delivery of this product.

Of significant concern is the suggestion that SEPP 65 may not apply. The setting aside of these planning considerations should not be seen as the incentive to provide this type of housing. The amenity of future residential dwellings should not be compromised by their tenure.

If the Standard Instrument LEP is to be amended to mandate it as a permissible use in a particular zone, then it should not be permitted in the B3 Commercial Core zone, nor fulfill the minimum commercial floor space requirements of North Sydney Council's B4 zone as they primarily seek to deliver employment outcomes as articulated in the zone objectives. As BTR is effectively a "residential accommodation" land use type, the SEPP should simply mandate it as permissible wherever an Environmental Planning Instrument permits "residential flat buildings" or "multi-dwelling housing" (noting it applies to a development with more than 50 dwellings) as permissible with consent in a particular zone. This would ensure that the character of a locality is not significantly changed as a result of the proposal.

Please call me on 9936 8302 if you would like to discuss this submission further.

Yours sincerely

Marcelo Occhiuzzi
MANAGER STRATEGIC PLANNING



New South Wales

State Environmental Planning Policy Amendment (Build-to-rent Housing) 2021

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

ROB STOKES, MP
Minister for Planning and Public Spaces

Published LW 12 February 2021 (2021 No 52)

State Environmental Planning Policy Amendment (Build-to-rent Housing) 2021 [NSW]

State Environmental Planning Policy Amendment (Build-to-rent Housing) 2021

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Build-to-rent Housing) 2021*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

This Policy is repealed on the day following the day on which this Policy commences.

Schedule 1 Amendment of State Environmental Planning Policy (Affordable Rental Housing) 2009

Part 2, Division 6A

Insert after Division 6—

Division 6A Build-to-rent housing

41A Definitions

In this Division—

Apartment Design Guide has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

Greater Sydney Region has the same meaning as in the *Greater Sydney Commission Act 2015*.

tenanted component, in relation to development, means the dwellings referred to in clause 41B(3)(a), and includes the common spaces and shared facilities provided in the development for the use of the residents of the dwellings.

41B Development for the purpose of build-to-rent housing permitted with consent

- (1) The objective of this clause is to enable certain residential accommodation to be used as build-to-rent housing.
- (2) This Division applies to development for the purposes of multi dwelling housing, residential flat buildings or shop top housing on land in the following zones—
 - (a) a zone in which development for the purposes of residential flat buildings is permissible under another environmental planning instrument,
 - (b) Zone B3 Commercial Core,
 - (c) Zone B4 Mixed Use,
 - (d) Zone B8 Metropolitan Centre.
- (3) Development consent may be granted for development to which this Division applies if—
 - (a) the development contains at least 50 dwellings occupied, or intended to be occupied, by individuals under residential tenancy agreements, and
 - (b) all buildings containing the dwellings are located on the same lot of land.

41C Conditions of build-to-rent housing to apply for at least 15 years

- (1) Despite clause 41B(3), development consent must not be granted to the erection or use of a building for development to which this Division applies unless the consent authority is satisfied that, during the relevant period—
 - (a) for development on land in Zone B3 Commercial Core—the building will not be subdivided into separate lots, and
 - (b) for development on land in another zone—the tenanted component of the building will not be subdivided into separate lots, and
 - (c) the tenanted component of the building will be—
 - (i) owned and controlled by 1 person, and

- (ii) operated by 1 managing agent, who provides on-site management.
- (2) Despite any other provision of this Division, development consent must not be granted to the erection or use of a building for development to which this Division applies on land in Zone B3 Commercial Core unless the consent authority is satisfied that a reasonable change of use can be carried out to change the use of the building to commercial premises.
- (3) In this clause—
 - relevant period* means—
 - (a) for development on land in Zone B3 Commercial Core—a period commencing on the day an occupation certificate is issued for all parts of the building or buildings to which the development relates and continuing in perpetuity, or
 - (b) for development on other land—a period of 15 years commencing on the day an occupation certificate is issued for all parts of the building or buildings to which the development relates.

41D Non-discretionary development standards

- (1) The objects of this clause are—
 - (a) to identify development standards for particular matters relating to development for the purposes of build-to-rent housing that, if complied with, prevent the consent authority from requiring more onerous standards for those matters, and
 - (b) to make it clear that this clause does not enable or prevent the granting of development consent if the development does not comply with a standard specified in this clause.
- (2) For the purposes of section 4.15(2) and (3) of the Act, the following are non-discretionary development standards in relation to the carrying out of the development to which this Division applies—
 - (a) **building height**
 if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for a building on the land,
 - (b) **density or scale**
 if the density and scale, expressed as a floor space ratio, of the proposed buildings are not more than—
 - (i) the existing maximum floor space ratio for residential accommodation permitted under another environmental planning instrument on the land, or
 - (ii) if the development is on land in a zone in which no residential accommodation is permitted under another environmental planning instrument—the existing maximum floor space ratio for other development permitted on the land,
 - (c) **parking**
 if the number of parking spaces complies with—
 - (i) the number of parking spaces required under the relevant development control plan or local environmental plan for a residential flat building, or

- (ii) if the development is carried out wholly or partly on land in an accessible area in the Greater Sydney Region—the lesser of the number of parking spaces required under subparagraph (i) or 0.5 parking spaces for each dwelling.
- (3) To avoid doubt, this clause does not—
 - (a) prevent the consent authority from refusing a development application in relation to a matter not specified in subclause (2), or
 - (b) enable or prevent the granting of development consent if a standard specified in subclause (2) is not complied with.

41E Design requirements

- (1) This clause applies to development to which this Division applies only if *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* applies to the development.
- (2) In determining an application for the modification of a development consent or a development application for the carrying out of development to which this clause applies, the consent authority must—
 - (a) be flexible in applying the design criteria set out in the Apartment Design Guide, including, in particular, the design criteria set out in Part 4, items 4E, 4G and 4K, and
 - (b) in its consideration of the objectives set out in Part 4 of the Apartment Design Guide, consider the following—
 - (i) the amenities proposed to be provided to tenants residing in the development through common spaces and shared facilities and services,
 - (ii) whether the configuration and variety of dwellings in the development will provide adequate options to prospective tenants in relation to the size and layout of the dwellings,
 - (iii) whether tenants residing in the development will be able to relocate to other dwellings in the development that will better accommodate their housing requirements if their requirements change.

41F Active uses on ground floor of build-to-rent housing in business zones

- (1) The objective of this clause is to ensure that, in relation to development for the purposes of build-to-rent housing, active uses are provided at the street level in business zones to encourage the presence and movement of people.
- (2) This clause applies to development to which this Division applies if the development is on land in a business zone, including as part of a mixed use development.
- (3) Despite clause 41B(3), development consent must not be granted to development to which this clause applies unless the consent authority is satisfied that the ground floor of the building—
 - (a) will not be used for the purpose of residential accommodation, and
 - (b) will not be used for a car park or to provide ancillary car parking spaces, and
 - (c) will provide for uses and building design elements that encourage interaction between the inside of the building and the external public areas adjoining the building.

- (4) Subclause (3)(c) does not apply to a part of a building that—
 - (a) faces a service lane that does not require active street frontages, or
 - (b) is used for any of the following purposes—
 - (i) a lobby for a residential, serviced apartment, hotel or tenanted component of the building,
 - (ii) access for fire services,
 - (iii) vehicular access.
- (5) Despite clause 8, in the event of an inconsistency between this clause and a local environmental plan or a development control plan applying to the land, the plan prevails to the extent of the inconsistency.

41G Conditions requiring land or contributions for affordable housing

Nothing in this Division is to be taken to override a requirement to dedicate land or pay a monetary contribution under section 7.32 of the Act.

41H Consideration of Apartment Design Guide for further subdivision of dwellings

Development consent must not be granted for development involving the subdivision of a residential flat building for which consent has been granted under clause 41B(3) unless the consent authority has considered the relevant provisions of the Apartment Design Guide in relation to the part of the building affected by the subdivision.

Schedule 2 Amendment of State Environmental Planning Policy (State and Regional Development) 2011

Schedule 1 State significant development—general

Insert at the end of the Schedule, with appropriate clause numbering—

Build-to-rent housing

- (1) Development permitted under Part 2, Division 6A of *State Environmental Planning Policy (Affordable Rental Housing) 2009* if—
 - (a) the proposed development has a capital investment value of—
 - (i) for development on land in the Greater Sydney Region—more than \$100 million, or
 - (ii) for development on other land—more than \$50 million, and
 - (b) the tenanted component of the proposed development has a value of at least 60% of the capital investment value of the proposed development, and
 - (c) for development on land in Zone B3 Commercial Core—the proposed development does not involve development that is prohibited under an environmental planning instrument applying to the land, other than development for the purposes of multi dwelling housing, residential flat buildings or shop top housing, and
 - (d) for development on other land—the proposed development does not involve development that is prohibited under an environmental planning instrument applying to the land.
- (2) Subclause (1) does not apply to development on land within the area of the City of Sydney.
- (3) In this clause—

Greater Sydney Region has the same meaning as in the *Greater Sydney Commission Act 2015*.

tenanted component has the same meaning as in clause 41A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

State Environmental Planning Policy Amendment (Build-to-rent Housing) 2021 [NSW]
Schedule 3 Amendment of State Environmental Planning Policy No 65—Design Quality of Residential
Apartment Development

**Schedule 3 Amendment of State Environmental Planning
Policy No 65—Design Quality of Residential
Apartment Development**

- [1] **Clause 29 Determination of applications for development consent modifications**
Omit “clause 115 (3A)” from clause 29(1). Insert instead “clause 115(3B)”.
- [2] **Clause 30 Standards that cannot be used as grounds to refuse development consent
or modification of development consent**
Omit “section 79C (2)” from clause 30(3)(b). Insert instead “section 4.15(2)”.