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

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This Policy is repealed on the day following the day on which this Policy commences.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

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)".