

Build to Rent Projects in Australia

With Build to Rent (BTR) on everyone's radar, we share some of our thoughts based on our experiences in this sector.

Mindset

Careful consideration of the design of the development, title structuring and legal ownership structure is necessary to accommodate a long term hold strategy (and potential exit to a long term investor with similar concerns) as opposed to an off-the-plan "sell and forget" mindset.

Strata subdivision

Whilst unnecessary and perhaps inappropriate given the additional costs, land taxes and rates, it can make sense to build so that the development is "strata ready". This includes obtaining a development consent for a strata subdivision and having a plan of subdivision prepared and ready for lodgement at any time. It may be a condition of lender funding and also serves as a "value add" ready to execute exit strategy for the owner or a subsequent buyer.

Mixed use developments

BTR in a mixed use development requires special attention to the building management statement and similar agreements regarding the use of shared spaces and shared costs between stratum lots. Issues that become relevant include:

- the critical size of the development for feasibility;
- functionality of shared access/egress, car park management systems and turning circles;
- setting budgets for shared costs;
- dedicated lifts and service ways for various components of the development;
- priority of use of various common facilities;
- the treatment of structural and airborne noise and vibration; and
- planning and zoning requirements.

Robustness

The robustness of the construction and building services and therefore additional capex needs to be considered to reduce long term opex and maintenance costs (e.g. wider corridors, longer life plant and equipment, low maintenance finishes).

Amenities

The extent and style of amenities (pools, connectivity, technology, social spaces, gyms, storage space, children's play areas) needs to match the expected demographic, target audience and operational capabilities. A BTR strategy should ideally encompass the need to pivot to student accommodation, shared house accommodation and other market life style requirements. Services agreements will need to reflect the nature and scope of amenities.

Local government planning and zoning

The political/PR strategy involved will depend on the nature of the development and location given that some areas may have a "NIMBY" factor to contend with. Local council support is generally on the side of affordable housing. Uses that include employment possibilities and last mile logistics may also have the focus of local councils, meaning it may be beneficial to include a retail, office or other use as part of the development.



Tax Structuring

The tax hand brake on the industry is slowly being relaxed but issues on tax treatment of BTRs are still "work in progress".

- **Stamp duty** - what is being acquired is residential estate and in some states this will attract higher stamp duty rates above certain thresholds, though some exemptions apply.
- **Income tax and withholding tax** - the industry has welcomed the 2023 Federal Budget announcement that from 1 July 2024 certain prescribed Managed Investment Trusts will see withholding tax reduced from 30% to 15% on qualified developments. Capital works deductions are increased from 2% to 4%. To be eligible for the tax concessions, the BTR development must have commenced construction after 9 May 2023 and be for at least 50 apartments, anyone should be able to rent the apartments, they must be retained under single ownership for at least 10 years and the lease term for individual apartments must be for at least 3 years.
- **Land tax concessions** - a reduction on land tax is available in some jurisdictions where the prescribed conditions are satisfied. For example, in NSW there must be a minimum of 50 dwellings and the title must not be subdivided for 15 years (otherwise repayment of the concession is required). There is also a requirement that 10% of the construction workforce hours must be undertaken by certain categories of workers.
- **GST** - the real challenge has been that GST incurred during the development of the project (i.e. on materials and project services) are a sunk costs on the basis that there is no ability to claim an input credit for the GST. The industry is still seeking a solution to this issue.

Investment and operational strategy

As with all developments, BTRs are largely driven by tax and the nature and source of capital. Establishing the right ownership, entry, exit and operational structure is critical. Strategies may include:

- developer build-to-hold and operate strategy;
- fund through models with developer developing for an ultimate take-out party who will own and operate;
- ultimate ownership in a bifurcated prop-co and op-co structures under a lease or operating agreement with detailed consideration of the responsibilities for capex and opex; and
- "white label" operators and branded residences under management agreements or leases (similar to the hotel industry) and as the industry develops combinations of these (i.e. franchise, manchise, lease with turnover).



Legal Scope of Services

1. **Structuring Advice** – developing possible ownership structures and summarising the key income tax, GST and stamp duty attributes of the various structures, assisting with the selection of the recommended structure and implementing the recommended structure. Developing necessary leases, management agreements and services agreements to suit the proposed structure.
2. **FIRB Requirements** – assisting with the preparation of a FIRB application, if required. Acquisition of developed residential land requires FIRB approval regardless of the transaction value and is not ordinarily approved. The purchase of vacant land for development requires FIRB consent with the standard conditions including the commencement of continuous construction within five years of purchase.
3. **Title and Property** – the customary due diligence in regard to the title of the land and the property including the review of existing site titles, typical statutory searches and risk considerations. Advising on the development's proposed title structuring including mixed use, stratum and possible strata arrangements.
4. **Planning and Environment** - review the current planning and other regulatory approvals and identify what approvals are required, in addition to assessing whether any existing approval conditions have been satisfied and the risks. Broader strategies in dealing with local authorities, community groups and public relations.
5. **Development and Construction** - early contractor engagement, advising on engagement of professionals, development of design and construct building contract and advising in regard to the other bespoke arrangements, development deeds, project management agreement and fund through models.
6. **Finance** - review and negotiate the debt term sheet and negotiate financing documents, securities and associated "step-in" arrangements.
7. **Legal Project Management** – working with a legal project manager as part of the legal team to coordinate the preparation of the legal documentation, timelines and milestone date and communications.

Our team



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