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23 February 2023

Ms Kiersten Fishburn  
Secretary  
NSW Department of Planning, Housing and Infrastructure  
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Dear Ms Fishburn,

The Property Council of Australia welcomes the opportunity to provide a submission to the NSW Department of Planning, Housing and Infrastructure (the Department) in response to the Explanation of Intended Effects (EIE) on low and mid-rise housing.

As you know, our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive, sustainable, and safe places.

### **Overview**

The Property Council strongly supports the reforms to create a new State Environment Planning Policy (SEPP) to allow terraces, townhouses, duplexes, 1-2 storey apartment blocks and residential flat buildings of 3-6 storeys in R2 and R3 zones where they are currently banned under local environment plans (LEP) or restricted through a development control plan (DCP). We also support the intention for this policy to create a new floor of permissibility for low and mid-rise housing while also allowing local government planning rules to go further.

The policy represents a sensible step forward to deliver more "missing middle" housing in local council areas where it has previously been banned. There is huge untapped potential for density done well in areas already zoned for low and medium density right across Sydney and our regions. If well executed, the policy has potential to deliver a significant portion of the 377,000 homes NSW needs to deliver under the National Housing Accord.

To assist in improving the strategic application and general workability of the policy, the Property Council has proposed a series of recommendations, included in summary form, below:

1. Release the Region Plan and housing targets urgently and well ahead of the National Housing Accord commencement date of 1 July 2024, and outline the contribution of this policy to meeting region and district level targets across the six cities region.
2. Partner with the private sector to reduce the residential development cost base.

3. Expand the site area under the Tier Two Transport Oriented Development (TOD) Program to an 800m radius and increase minimum buildings heights to 12 storeys to fully leverage the state's catalytic investment in transport infrastructure and improve the complementarity of the program with the low and mid-rise planning changes.
4. Ensure the low and mid-rise planning policy is applied to rapid bus interchanges and corridors within the definition of a station.
5. Undertake an economic analysis of town centre capacity and amenity to determine the application of the policy within an LEP, rather than allowing councils to undertake their own assessments.
6. Apply a high degree of scrutiny to local council LEP amendments to ensure they are not inconsistent with the stated objectives of the low and mid-rise policy.
7. No restrictions should be placed on a proponent's ability to subdivide lots under the policy when compliance with the patternbook and design and amenity standards are achieved.
8. No changes should be made to the current caps on council funding for local infrastructure, including the \$20,000 per home/lot cap for most infill areas under Section 11 Contributions and the 1 per cent cost of development cap under Section 7.12 Levies.
9. Any updates to Section 7.11 and/or Section 7.12 local contributions plans as a result of the low and mid-rise planning changes should be balanced against prevailing market conditions and take account of development feasibility.
10. A Practice Note and accompanying Ministerial Direction should be developed to provide guidance to councils and proponents about how potential heritage and development conflicts can be resolved.
11. Where there is a high level of public transport accessibility a maximum car parking ratio should apply with no mandated requirement to provide parking spaces for mid-rise housing.
12. Ensure industry continues to be a partner in the development of the patternbook and that key considerations related to commercial feasibility are weighted alongside the pursuit of good design and amenity.
13. Accelerate the design competition for the patternbook.

### **Housing Targets**

It is vital that the finalisation of this and supporting state planning policies be accompanied by the publication of the NSW Government's Region Plan and housing targets. The NSW Government should not overlook the importance of the housing targets in providing a clear strategic signal to industry.

The state's housing targets will not only serve to guide the future pattern of investment in NSW but also set significant benchmarks for improving housing performance across the state. Industry cannot afford to wait a further three months after the reform package is finalised for the housing targets to be released. This would represent a major missed opportunity for the NSW Government and would seek to undercut the tireless work of the Department.

The National Planning Reform Blueprint makes clear that state, regional, and local strategic plans should be updated to reflect the National Housing Accord targets. As such, we are calling on the NSW Government to urgently release the Region Plan and housing targets well ahead of the National Housing Accord commencement date of 1 July 2024, and outline the contribution of this policy to meeting region and district level targets across the six cities region.

### **Development Feasibility**

The development industry faces significant cost pressures in delivering a robust housing pipeline. Elevated capital, material and supply chain costs, labour shortages, regulatory reform burdens, alongside a swathe of state and local infrastructure charges and levies threaten to undermine the state's capacity to meet our National Housing Accord commitments.

Given the current sensitivity of the housing market, the building and construction sector has no capacity to accommodate additional fees, charges, and delays. Taxation changes in the most recent NSW Budget, including changes to landholder duty and wholesale unit trusts, have only served to further impair industry's ability to deliver housing. These changes were introduced without prior consultation with industry, and the Property Council can provide examples of projects that have been put on hold as a direct result of the loss of confidence and restrictions around capital created by the new legislation.

To achieve the National Housing Accord's targets, the government must partner with the private sector to reduce the residential development cost base and take account of prevailing market conditions as it refines its planning and investment policy suite.

### **Transport Oriented Development**

The Property Council supports the Transport Oriented Development (TOD) Program reforms prevailing over the low and mid-rise planning changes where they apply to discrete precincts. It's important that this is clearly articulated in the drafting of the SEPP to limit confusion regarding the interaction of the policies.

As we have previously indicated in our TOD submission, we recommend the Department expand the site area under the Tier Two Program to an 800m radius and increase minimum buildings heights to 12 storeys. This will enable the NSW Government to fully leverage the state's catalytic investment in transport infrastructure and improve the complementarity of the program with the low and mid-rise planning changes to support better urban design and amenity outcomes.

### **Station and Town Centre Precincts**

The EIE outlines that the low and mid-rise planning changes are proposed to apply within 800 meters walking distance of a heavy rail, metro or light rail station. However, it is not clear why rapid bus interchanges have been excluded from the station definition. Many rapid service routes form the backbone of the state's transport network, providing customers with mass transit level services between centres which are not linked by trains or light rail. As such, the Property Council recommends that the low and mid-rise planning policy be applied to rapid bus interchanges and corridors.

The Property Council is also concerned with what constitutes a town centre in the EIE. The policy is highly prescriptive regarding the goods and services within land zoned E1 Local Centre or MU1 Mixed Use, noting it will need to contain a "wide range of frequently needed goods and services such as full line supermarkets, shops and restaurants". A full line supermarket is commonly defined as a supermarket with a full range of goods, including packaged groceries, fresh meat, bakery and deli department, fresh fruit and vegetables and frozen foods, that has a gross floor area greater than 2,500sqm. This provision would effectively rule out many appropriately sized town centres from the low and mid-rise changes.

Furthermore, there is a risk that this definition will be read strictly by local councils and not appropriately applied to locations that can absorb additional demand generated by an increase in housing supply. As such, the Property Council recommends that the Department re-examine the criteria which constitutes a zoned centre under the policy to ensure the provision is not applied narrowly by local councils.

The EIE also notes that the Department is seeking input from councils to determine which E1 and MU1 centres contain an "appropriate" level of goods, services and amenities to be included under the program. The Property Council is concerned that this will, when combined with a narrow reading of the criteria, create scope for local councils to unnecessarily exclude key sites under the changes. As such, we recommend the Department undertake its own economic analysis of town centre capacity and amenity to determine the application of the policy within an LEP.

## **Down Zoning and Subdivision**

There is a risk that local councils will seek to amend their LEPs to down zone areas that are subject to the new low and mid-rise planning changes. Where a local council drafts a planning proposal to amend an LEP and submits it to the Department for gateway determination, a high degree of scrutiny should be applied to the amendment to ensure the proposed change is not inconsistent with the stated objectives of the low and mid-rise housing policy.

Currently, the EIE contains limited information about the role and allowance for torrens title subdivision under the planning changes. To encourage uptake of the policy by smaller and medium scale developers and builders, no restrictions should be placed on a proponent's ability to subdivide lots under the policy when compliance with the patternbook and the design and amenity standards are achieved.

## **Local Infrastructure Contributions**

The Property Council acknowledges that the right infrastructure funding mix will be critical in supporting a sustainable increase in housing supply. The Property Council supports using existing mechanisms in the infrastructure contributions system to fund state and local infrastructure.

As highlighted above, industry is strongly opposed to the introduction of any new contribution charges under the state's policy reforms, or indeed changes to the current caps on council funding for local infrastructure, including the \$20,000 per home/lot cap for most infill areas under Section 11 Contributions and the 1 per cent cost of development cap under Section 7.12 Levies.

The EIE notes that updates to Section 7.11 and/or Section 7.12 local contributions plans may be required as a result of these low and mid-rise planning changes. Any such updates should be balanced against prevailing market conditions and take account of development feasibility.

## **Non-Refusal Standards and Heritage Conservation Areas**

The Property Council supports the NSW Government's intention to apply a set of 'non-refusal standards' under the policy to overrule LEP or DCP standards that are more onerous than the non-refusal standard. The decision to turn off minimum site area and width standards in LEPs as part of these reforms, allowing consideration of the individual merits of mid-rise developments on a case-by-case basis within the context of the site, is sound.

The Property Council also supports the NSW Government's non-refusal standards applying in heritage conservation areas and to heritage items. We understand that while new planning controls will apply in heritage conservation areas, a merit-based assessment will also continue to apply to developments in these locations. The Property Council recommends a Practice Note and accompanying Ministerial Direction be developed to provide guidance to councils and proponents about how potential heritage and development conflicts should be resolved.

A Practice Note and accompanying Ministerial Direction should include a specific and clear objective outlining the Government's policy intent to realise more market housing. This should provide clear guidance to the consent authority that delivery of new housing is the paramount objective of the policy and that a hierarchy exists when councils undertake merit-based assessments of heritage and other impacts.

## **Apartment Design Guide**

The Property Council supports the changes to the Apartment Design Guide (ADG) that would facilitate application of this policy across the six cities region. Property Council members have been concerned for many years that councils have been incorrectly applying the design criteria and design guidance in the ADG as strict development standards, with the Department of Planning's various clarifying planning circulars consistently ignored by consent authorities. In many cases, the ADG has been used to simply oppose residential development even if the

objectives of the ADG have been achieved and a superior design outcome has been delivered. The creation of suitable design criteria under the proposed changes, which may vary some of the ADG provisions, will ensure that councils cannot use the ADG as a basis to refuse well-designed mid-rise housing that delivers excellent amenity and liveability for residents and the community.

While we support the creation of minimum car parking rates to create a consistent approach for mid-rise housing, where there is a high level of public transport accessibility, a maximum car parking ratio should apply with no mandated requirement to provide parking spaces. This is the current practice within the City of Sydney, where developers are free to provide no parking where the market does not deem it valuable. The cost of providing parking in apartment buildings can cost between \$50,000 to \$100,000 per apartment. Pursuing a more flexible approach to car parking ratios for mid-rise housing is also consistent with the NSW Government's objectives of supporting modal shift to public transport and could have the added benefit of improving the affordability of this critical housing typology.

It is important to note that opposition to the planning changes, specifically on energy performance and climate resilience grounds are moot, following the introduction of the Sustainable Buildings SEPP. As the Department is aware, the SEPP has created new energy and thermal performance standards ensuring all new residential buildings will be naturally cooler in summer and warmer in winter.

### **Patternbook**

The Property Council welcomes the commitment to create a patternbook for low-rise residential development in NSW. It is critical that industry continues to be a partner in the development of the patternbook and that key considerations related to commercial feasibility are weighted alongside the pursuit of good design and amenity.

We also encourage the NSW Government to move at pace to finalise the design competition for the low-rise patternbook. Community buy-in for these critical land use changes will only be possible if the NSW Government can demonstrate the program will deliver a high-quality outcome for their neighbourhoods, which will be difficult to demonstrate if the process is protracted.

### **Conclusion**

The Property Council would like to thank the Department for their ongoing engagement with industry on the low and mid-rise planning changes. If you have any questions about this submission, please contact NSW Policy Manager, Michael Player at [mplayer@propertycouncil.com.au](mailto:mplayer@propertycouncil.com.au).

Yours sincerely,



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