PROPERTY DEVELOPMENT AND GST

REPORT FOR THE AUSTRALIAN TAX OFFICE

July 2021

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Acknowledgement: We are grateful to Rejoy Benjamin and Urs Meier for their assistance in preparing this report.

Executive Summary

As well as providing jobs and shelter (two crucial aspects of wellbeing), the property and construction industry is an important source of goods and services tax (GST) revenue. The industry is economically prominent nationally and characterised by many sectors and practices. This means that GST issues and practices are likely to differ across the industry as well as by location. In this report, we explore some of its key emerging trends in the context of GST administration and collection. Our discussion does not explicitly investigate the practice of GST planning per se; rather, we describe some of the key settings where compliance behaviours will continue to evolve.

Australia's GST structure is internationally distinct; arguably, New Zealand's GST structure is the most (and reasonably) similar. This means that international comparisons are useful but never completely applicable to the Australian context. Our investigation included a review of international literature, both academic and the so-called grey literature (that is, reports by government (sponsored) organisations such as the OECD). We found very little publicly accessible research into tax practices in the property and construction industry. This suggests there is perhaps an information gap that at least in part could be addressed by stronger alignments between research bodies and government agencies.

Complementing our analysis of secondary resources were interviews with industry participants. Analysis of the interviews revealed:

- GST costs are considered as part of the broader context of a development project, which includes state and territory taxes such as stamp duty. This means that compliance behaviour should not be considered in isolation, but rather in the context of a project's (local) peculiarities.
- Greater guidance from the Australian Tax Office (ATO) (or alternative relevant authority) could benefit operators in the industry, especially with respect to some of the newer emerging trends such as co-living spaces and build-to-rent projects.
- Macroeconomic conditions and expectations are critical elements of a development decision process as well as a key determinant of future trends.
- COVID-19 potentially represents a major structural change in the way business is conducted and life is lived, which will affect demand across the industry unevenly.

Several types of property development were the focus of our investigation. Here is a snapshot of some of the key questions.

- Is co-living a stand-alone asset class for GST purposes? This question is not trivial, given that co-living can be part of a larger mixed-use building that includes a gym and retail spaces.
- How to treat different ownership models and types of owners? With respect to build-to-rent, how might superannuation and pension funds be treated as debt or equity partners? Further, how should the sale of dwellings over the long-term investment horizon be treated?
- Retirement and aged care property development provides a particularly interesting question: how might government-initiated reforms influence the types of development going forward? We suggest that this sector is facing an unprecedented structural change with a combination of in-home renovations and the need for higher-standard end-of-life care. The change will inevitably affect GST revenue sources and levels.
- A key question emerging from our discussion on land banking is: how effective are state/territory taxes in freeing up property?
- To what extent will traditional offices and office developers adapt to the new norm of working offsite? The adaption will largely determine the level and location of development activity and therefore GST revenue.
- Student accommodation is arguably the sector that was hardest hit by the pandemic. A major consideration for the higher education sector (and the Australian economy as a whole) is, will the sector recover to pre-pandemic levels? If it does not, it is likely that activity in this sector (and therefore GST from it) will decline.

In addition to these primary questions we also discuss some of the macroeconomic settings that will largely determine the level and type of activity in the property and construction industry.

Observations include:

- Financial support from banks may be harder to garner in the future due to regulatory requirements. This may lead some developers to seek non-financial institution financial backing.
- Foreign investment (and relations more generally) has traditionally been a significant source of funding. It could be that this will be less so into the future, which again may change the composition of backers in the industry.
- Economic disruptions need to be considered as a major factor in determining how development inputs will be allocated – we briefly present a COVID-19 case study to illustrate this.

In summary, the report explores some of the key (emerging) trends in the property and construction industry. Overall, while the outlook is positive, there are some areas where margins will be thinner and perhaps newer participants and relationship types may emerge. We believe this may ultimately influence tax practices and therefore revenue sources and levels.

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1. Introduction

The property and construction industry is a major contributor to national economic activity. It comprises many sectors, two of which are the focus of this investigation: residential and non-residential building construction.[1] For this report, the residential construction sector primarily comprises the building of new homes. The non-residential building construction sector is diverse and includes offices, apartments/multi-units and institutions (e.g., hospitals). Over the past decade, growth across these two sectors has been strong.[2]

Together, residential and non-residential construction in the 2020-21 financial year is expected to accrue $139 billion in revenue (down from $167 billion 2019-20) and comprise 80,000 enterprises (Kelly, 2020 a-d). More broadly, the construction sector[1] is expected to earn $390 billion in revenue for the 2020-21 financial year and employ approximately one million people (Kelly, 2020e). Notably, this employment figure comprises the third-largest cohort of young workers.[3] These figures show that the construction sector is important and makes a significant contribution to the national economy.

The two sectors are characterised by considerable complexity and a large variety of business-to-business transactions. These features necessarily demand specific attention to tax practices, which is reflected internationally by (non) academic studies (e.g., OECD, 2019). Price manipulation, undeclared transactions and aggressive tax planning are just some of the issues that have been cited as areas of concern (OECD, 2006).

The objective of this report is to highlight emerging and significant trends that may have implications for tax collection, particularly with relation to GST. This includes a focus on critical subsectors such as student accommodation and build-to-rent. The analysis draws on numerous reports, government papers and insights from industry experts.

No policy recommendations or quantification of non-compliance are presented. The report's structure is as follows: Section 2 contains a brief overview of the approach; Section 3 provides the tax context of the report based primarily on a desk review; in Section 4 sector trends such as co-living, co-working, build-to-rent, retirement living and land banking are outlined and discussed; in Section 5, supply-side influences, Foreign Investment Review Board (FIRB) and bank lending changes are discussed; in Section 6, we consider future implications of this research by property type; and in Section 7 the main findings of the report are summarised.

[1] Sectors not specifically focused on in this report include major infrastructure such as bridges and roads.
[2] See for example the Australian Bureau of Statistics release on residential property price indexes: https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/residential-property-price-indexes-eight-capital-cities/latest-release. Accessed 20 March 2021.
[3] https://australianjobs.dese.gov.au/jobs-industry/industry-overview. Accessed 30 October 2020.

2. Our Approach

Our approach to this investigation comprised three parts.

Part A: *Document review* of secondary academic and grey literature. This includes domestic and international publications in leading academic journals, industry reports, and (international) revenue office publications covering the relevant property and taxation literature.
Part B: *ATO input* based on a critical assessment of the information gathered. Specifically, the ATO's feedback helped to determine key foci of the investigation.
Part C: *Interviews of expert and industry practitioners*.

The approach was structured to enable deeper and more careful consideration of the research objective. An important feature was interviews with key stakeholders. The benefits of interviewing key stakeholders when investigating uncharted areas (including taxation) has been clearly identified in the literature (for example, see Bogner et al*.,* 2009, and de Silva et al., 2018).

Complementing the interviews[4] was a desk review. Keywords used to identify articles and reports were GST/VAT/Tax Compliance, GST/VAT/Tax Evasion, Property Construction, Real/Estate. Special consideration was given to those articles that appeared in journals of high repute as well as key international organisations such as the OECD.

[4] All research was conducted consistent with RMIT University ethics (Project Number: 23715).

3. Context: Taxation Issues and the Property and Construction Industry

The particular focus in this section is indirect taxes. Academic literature about taxation practices in the Australian property and construction industry is scarce. However, there have been several reports from organisations such as the OECD, which is perhaps indicative of the broader issues around taxation that are of concern to member jurisdictions.

The review in this section was conducted to provide a snapshot of the extant literature on the subject and themes for the interviews. A brief outline of how GST applies to the property and construction industry is provided next, followed by a discussion of relevant academic papers and reports that shed light on the key areas of concern. The last part of this section looks at taxation issues in the property and construction industry and areas of concern for tax authorities in the UK and New Zealand.

3.1. The basics of the GST and the property and construction industry

The New Tax System (Good and Services Tax) Act 1999 imposes a 10% consumption tax on goods and services consumed within the indirect tax zone, i.e., Australia. In terms of the property and construction industry, GST applies to sales of new premises (commercial or residential) with some notable exceptions. The property must be 'real property' (s.195-1, *GST Act 1999*). The exceptions to full taxation of real property under the GST regime are properties that actually are, intended to be, and capable of being used as residential premises; and properties that are not commercial residential premises and the premises are not new residential premises. Where the sales of property meet these exemption criteria they are input taxed pursuant to Subdivision 40C (*GST Act 1999*). These exemptions and rules equally apply to sales and long-term leases.

The complexities of the definitions of what constitutes residential property, commercial property and so on are beyond the scope of this report[5]. However, this brief set of basic rules sets the groundwork for analysis of how avoidance activity may be undertaken to eliminate or reduce GST liabilities. In terms of GST avoidance, Division 165 of the *GST Act 1999* gives the Commissioner of Taxation a broad and potentially far-reaching set of powers to deal with GST avoidance. The rules in this division are broadly similar to those in Part IVA of the *Income Tax Assessment Act 1936* but are arguably better designed and more likely to be effective (Datt, Nienaber and Tran-Nam, 2017). While these rules potentially have broad application, they are only intended to apply to schemes:

- that are artificial and contrived

[5] Conclusions in Section 4 of the report show that definitions are an important consideration for determining taxable revenue streams.

- where the primary objective is to derive a benefit by reducing the GST, increasing refunds, or altering the timing of either of the above.

Again, there are several instances where the Division 165 rules will not apply, and these are given in s.165-1. The division is not intended to apply to situations where, for instance: an exporter elects to have monthly tax periods in order to bring forward the entitlement to input tax credits; or a supplier chooses under section 9-25 of the *Wine Tax Act* to use the average wholesale price method for working out the taxable value of retail sales of grape wine. It is clear, therefore, that the purpose of Division 165 is to target artificial or contrived schemes only. Unlike its counterpart in the income tax acts, there have been relatively few cases that have emerged that have tested the boundaries of Division 165 (Datt, Nienaber and Tran-Nam, 2017). Nevertheless, Division 165 is a mechanism that provides the Commissioner with powers to prosecute GST avoidance.

3.2. Academic literature on taxation and the property and construction industry

As stated earlier, there is scant academic literature on tax practice within the Australian property industry; rather, there is a focus on specific legal or taxation issues (apart from an industry context) that may have implications for property and construction. Consequently, the approach taken in this report is to look at the issue/s being identified in the academic literature and ask the question: “Is the issue being deliberated something that could have implications for the property and construction industry?”

There are several articles that have dealt with issues around the notion of taxable Australian real property and capital gains tax (CGT) consequences. Rigby (2016) discusses the implications of the changes to the scope of taxable Australian property post-December 2006 and whether this achieved the intended policy objectives.

While taxable Australian real property is much wider-ranging than residential and commercial property (it can include rights to mining, for example), the CGT implications for non-resident taxpayers are nevertheless important.[6] Given the narrowing of the base discussed in this article, we may look at how the property industry might respond by attempting to classify property so as to fall outside the scope of the CGT regime or create structures that transfer ownership to entities in other jurisdictions to take advantage of the non-resident CGT rules, particularly in relation to the withholding of CGT at source.

[6] Another useful paper on this is Russell (2011), which looks at Art 13(4) of the OECD Model Tax Convention for taxing non-residents for capital gains and the complex rules set out in Div 855 of the *Income Tax Assessment Act 1997*. This is of particular relevance in the property and construction industry where interposed entities may be used to obfuscate ownership of real Australian property.

Related to the issue of real property is its valuation. Boulton (2017), for instance, discusses valuation issues and the implications for CGT. He argues that there is little guidance on how valuations are to be undertaken for CGT purposes, especially when market value is to be determined. This has clear CGT consequences; however, the value of property also has implications for the calculation of GST and hence the issues identified by Boulton take on some significant meaning.

Shifting attention to GST-related issues, Hanegbi (2020) discussed whether there was sufficient guidance on when isolated transactions would be considered an “adventure or concern in the nature of trade” for GST purposes. When applied to the property and construction industry, a taxpayer may seek to use the vagueness of the law to classify property transactions as isolated, but not commercial, and hence escape the associated GST consequences.

GST avoidance is an issue that has received some attention in recent times. Datt, Nienaber and Tran-Nam (2017) look at the different approaches taken by Australia and South Africa in relation to GST avoidance. They conclude that the Australian laws are more complex and also affirm that there is little by way of case law to help taxpayers’ understanding of how Division 165 may apply.

Zu and Krever (2017) look at the issues surrounding GST avoidance from the perspective of mismatches that can occur from using accrual versus cash accounting. They find that while the United Kingdom (UK) and New Zealand (NZ) have specific anti-avoidance rules to deal with this issue, Australia relies on the general powers available under Division 165. While this form of avoidance is not unique to the property and construction industry, it is nevertheless worth considering. More generally, this study raises the broader question about whether there is a need for specific anti-avoidance rules in the GST regime to supplement and complement the Division 165 rules.

Related to avoidance issues are compliance issues. Compliance costs in particular are of great importance and are generally related to avoidance levels. Woodward and Tan (2015) take up this issue in relation to small businesses. They examined the tax attitudes of small business owners in New Zealand and found that despite widespread intention to comply, the overall systems and related compliance costs meant that small businesses still found it hard to navigate the GST regime. These authors found that the way in which the Inland Revenue Office (NZ) dealt with this group of taxpayers had a significant impact on their perceived fairness of the system[7]. Similarly, Bain, Walpole and Evans (2015) found that in relation to the GST, compliance costs can influence the relationship between taxpayers and the tax authorities, as well as overall attitudes towards tax compliance.

While the large players in the property and construction industry in Australia are dominant, there remain many small operators. For the latter cohort, compliance costs and ATO engagement are

[7] Also see Ching, Kasipillai and Sarker (2017) for the same issue in the Malaysian context.

crucial elements to overall compliance. The implication, therefore, is that in order to understand future trends in the property and construction industry and how this may affect tax collection, a simultaneous eye must be cast on the compliance burden of the system, in particular the GST regime.

3.3. OECD initiatives

The OECD produced a report in 2006 that looked at money laundering and tax evasion carried out through the real estate sector. That report drew on the findings from a survey of 18 member countries including Australia. The report looked at three distinct aspects of the steps taken by tax authorities in these countries to mitigate the problem, these being: 1) detection and identification; 2) investigation and collaboration with other authorities and; 3) incentives to encourage compliance. It is worth noting that the concern of the OECD report was with money laundering and tax evasion as opposed to avoidance, which is the key focus of this report.

The OECD report found that while tax authorities were, for the most part, taking active steps to deal with money laundering and tax evasion in the real estate sector, there was little quantification or reporting of the problem. The report also found that the use of offshore entities (interposed or otherwise) and complex structures that concealed the beneficial owners of real estate were the key mechanisms used to enact money laundering and tax evasion.

In terms of the ability of tax authorities to deal with these issues, one of the main hindrances was access to relevant data. This was particularly noted in the case of Australia, where the ATO must rely on land registry and/or state revenue authorities (in relation to land tax, for instance) to get information on property transactions. Arguably, the data-matching capacity of the ATO is better now than at the time of the OECD report in 2006. Nevertheless, the key takeaway point here is that access to information and the ability to collaborate with other authorities, within and across jurisdictions, is increasingly important, especially since complex structures used to enable avoidance behaviours span national boundaries and jurisdictions.

In addition to the abovementioned report, the OECD has produced several other reports on the broader issues of tax evasion and financial fraud. See, for example, the *Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors* (2019), which contains (among other useful information) red flags that can be used in the identification phase of an investigation.

The OECD documents and academic literature referred to in the above sections provide directions in terms of how GST and tax avoidance may be framed, particularly in relation to cross-border transactions. These reports provided salient points for further elaboration in our interviews with key players, particularly further examination of the role of cross-border structures and business models.

Also relevant are issues relating to compliance costs and role that active engagement from the ATO can play in motivating better compliance.

3.4. Other jurisdictions and taxation of property transactions

In this section we look at how comparable jurisdictions, namely the United Kingdom and New Zealand, treat property transactions from a tax perspective. An in-depth review of the approach taken in these jurisdictions is beyond the scope of this report; therefore, the focus is on drawing attention to the general rules surrounding property transactions and notable recent rule changes related to indirect taxes and income tax.

3.4.1. New Zealand

IR730[8] released by the Inland Revenue Department (IRD) of New Zealand provides a succinct overview of how GST applies to land sales (see Figure 1). It is important to note that, as the document points out, land sales include buildings and structures on that land. It is apparent from IR730 that land sales attract GST at the 15% rate in much the same circumstances that it would apply to property sales in Australia. For instance, if a non-GST registered seller such as an individual taxpayer was to sell property to another individual taxpayer, no GST would apply. However, the differences arise in the above-mentioned scenario in that the buyer can claim a GST deduction (input tax credits) under NZ’s second-hand goods provisions if the property/land is being used for business purposes[9].

In other cases where the seller is registered for GST and is carrying on a business of dealing in property then GST would apply to almost all taxable supplies and, in most cases, the buyer cannot claim input tax credits. There also appears to be little separation between commercial and residential property in the NZ GST system. NZ does have the concept of a zero-rated supply, which applies in cases where a GST-registered seller makes a supply to a GST-registered buyer and the latter uses the property for provision of taxable supplies. Broadly considered, the NZ system of GST on land/property sales is comparable to Australia’s regime, but for some of the differences highlighted here.

NZ also applies the notion of a “bright-line test”[10] to property sales and this relates to whether properties are taxed upon sale. These rules, depending on the date of purchase of the property and the date of sale, impose income tax liabilities on the seller.

[8] https://www.ird.govt.nz/property/buying-and-selling-residential-property/gst-when-you-buy-and-sell-residential-property. Accessed 20 April 2021.
[9] It is not entirely clear whether the second-hand goods provisions in the *GST Act* allow for input tax credits to be claimed in the Australian context.
[10] For further information see https://www.ird.govt.nz/pages/campaigns/brightline. Accessed 21 April 2021.

Recent concerns or areas where policy changes have been considered

Habitual buyers and sellers

Current rules in NZ mean that for habitual buying and selling of land/properties to be taxable, such activities must be carried out by essentially the same 'person'. As the IRD points out in its consultation paper *Habitual buying and selling of land*[11], it has had concerns that individuals and/or groups of individuals are circumventing these rules by using multiple entities such that the same person cannot be seen to have engaged in the buying and selling activities. The proposal was to amend the rules such that a "group of people" rather than a person would be sufficient for the activity to be seen as habitual and hence would be taxable upon sale.

Deductibility of landholding costs

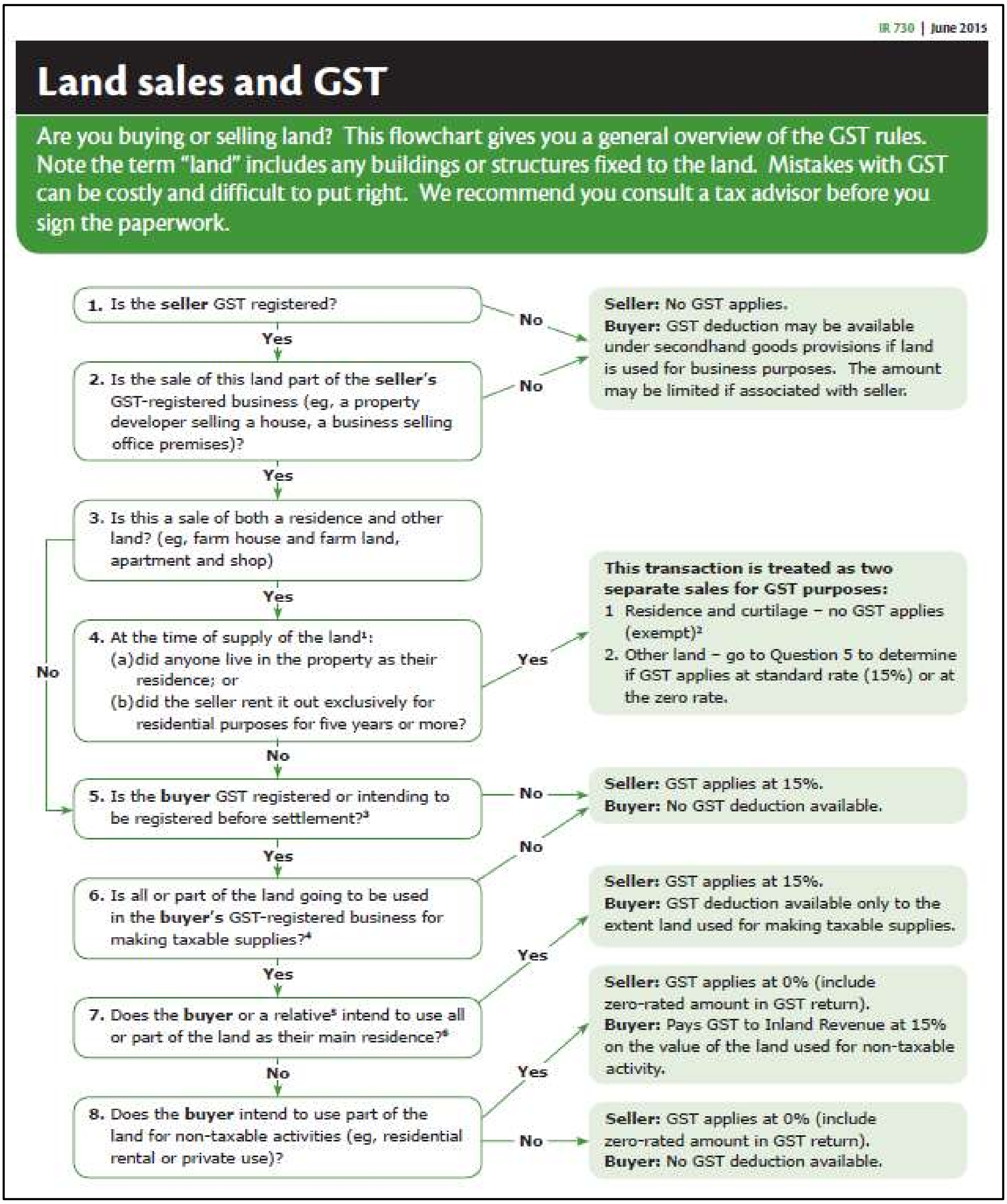
This is in relation to land that is taxable when sold but is being used wholly or partially for private use. The proposals in 2019 included a) providing a full deduction for all holding costs, b) providing no deductions for holding costs, or c) apportionment such that only non-private use of the landholding costs are deductible. Interestingly, Australia considered a similar question at approximately the same time[12]. Subsequently, in Australia vacant land costs are not deductible, but for a few exceptions.

Future trends

More recently, the NZ Government has announced significant changes to the tax system in order to improve housing affordability. Most significant among these proposed changes relate to deductions for interest on investment properties being denied[13]. This would apply to properties purchased on or after 27 March 2021 and deductions for existing investment properties will be phased out over four years. At the time of writing, legislation to enact these proposed changes had not been introduced to the NZ Parliament. These changes, if enacted, may have significant effects on the notion of 'negative gearing' in NZ. Their effects on actual housing affordability remain to be seen. However, it would likely have significant effects on trends in NZ property sectors going forward, particularly residential property.

[11] https://taxpolicy.ird.govt.nz/publications/2019/2019-ip-habitual-buying-selling-land/habitual-buying-and-selling-land. Accessed 20 April 2021.
[12] https://www.ato.gov.au/Individuals/Investments-and-assets/Land---vacant-land-and-subdividing/Deductions-for-vacant-land/. Accessed 20 April 2021.
[13] The factsheet released by the IRD can be found at https://taxpolicy.ird.govt.nz/publications/2021/2021-other-fact-sheet-interest-deductions.

Figure 1. Excerpt from IR730.



Source: Inland Revenue Department (2021)[14]

3.4.2. The UK

The rules in the UK in relation to property and construction are complex. GST is charged at two rates, 20% or 5%, in addition to the zero-rated category (which in some cases roughly equates to input taxed supply in Australia).

[14] https://www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir700---ir799/ir730/ir730-2015.pdf Accessed 5 May 2021.

Unlike the Australian and NZ regimes, the UK system also contains rules that apply to builders in relation to when and how much VAT they are required to charge. In addition to this, there are rules that apply at the time of sale of property. Whether the builder charges VAT and at what rate also affects the seller of the property, as it influences the VAT status of the property at the time of subsequent sale. The purpose of the dwelling and the type of entity (charity or hospital, for instance) also determines whether VAT applies[15]. In a sense, the UK VAT regime contains many more exclusionary rules than the Australian GST regime. Comprehensive coverage of the UK regime in terms of when VAT is charged by builders is beyond the scope of this report[16].

Recent changes/concerns for Her Majesty's Revenue and Customs (HMRC)

In the property and construction area, there have been relatively few changes in recent times that we could gather from the material available on HMRC's website. One significant change that we came across relates to what HMRC terms 'enveloped properties'. Other notable recent changes include Reverse VAT and disclosure of avoidance schemes.

Reverse VAT for the construction industry (similar to 'GST at settlement' rules in Australia)

Reverse VAT represents a significant change to accounting for VAT in the UK and applies to the construction industry. Reverse VAT is the situation where the end consumer of construction services (assuming they are VAT registered) accounts for the VAT and directly passes that on to HMRC; the supplier in this case does not charge or collect the VAT. This policy came into force in March 2021.

This is a significant recent measure that has been put in place to reduce what HMRC calls "Missing Trader Intra-Community" fraud. In general, HMRC has been concerned about this specific type of fraud, which they describe as stealing from the public purse[17]. Initiatives in this area are part of broader measures being undertaken by UK authorities to reduce VAT fraud. For instance, the Construction Industry Scheme was introduced to ensure that transactions between contractors and subcontractors in the construction industry were fully accounted for[18].

Disclosure of Avoidance Schemes: VAT and other indirect taxes (DASVOIT) – further consequential proposal

DASVOIT was introduced by the *Finance (No2) Act 2017* to enable HMRC to obtain early information about indirect tax avoidance schemes, including how they are intended to work and those who use

[15] The specifics of when and what rate of VAT applies to building and construction is detailed in VAT Notice 708, see https://www.gov.uk/guidance/buildings-and-construction-vat-notice-708.
[16] For further reading on this point see https://www.gov.uk/vat-builders. Accessed 23 April 2021.
[17] How to spot missing trader VAT fraud. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947102/Missing_trader_fraud_2020.pdf. Accessed 28 April 2021.
[18] Construction Industry Scheme: a guide for contractors and subcontractors (CIS 340). https://www.gov.uk/government/publications/construction-industry-scheme-cis-340/construction-industry-scheme-a-guide-for-contractors-and-subcontractors-cis-340. Accessed 26 April 2021.

them. DASVOIT has been designed to be structurally and conceptually similar to the Disclosure of Tax Avoidance Schemes (DOTAS) regime and the UK Government further proposes that the changes described here for DOTAS would apply to DASVOIT in the same way. In essence, the DASVOIT regime requires that promoters of schemes that result in a VAT benefit being received to report their activities to HMRC. There are, however, requirements for the person/s using these arrangements to also disclose such activity to HMRC when certain conditions are met. The regime requires the promoter (or person using such arrangements) to disclose the scheme or proposed scheme to HMRC where there is a tax benefit obtained, the scheme's primary benefit is a tax advantage, and the arrangement or scheme falls within one or more "hallmark" categories[19]. There are eight such hallmark categories[20].

We have not been able to establish whether this regime has been effective and whether compliance has been as expected, but such a regime may warrant further attention from the Australian Government if it can indeed address GST-related tax avoidance behaviours.

Enveloped properties

An area of concern centres around 'enveloped properties'. An enveloped property is where a property is not held directly by an individual but held by a corporate entity (other entity types are also used, such as partnerships or unit trusts). Prior to 1 April 2013 enveloped properties could be sold via the sale of the shares in the company, which avoided both stamp duty land tax (SDLT) and capital gains. The UK introduced the Annual Tax on Enveloped Dwellings as of April 2013 to ensure that properties that were being held for non-commercial purposes could not avoid stamp duty and capital gains taxes. Following this reform, a 15% SDLT and 28% capital gains tax apply to properties that are introduced into these corporate envelopes.

Despite these legislative changes, research commissioned by HMRC in 2015[21] found that most properties that were enveloped prior to 2013 remained in that state for several reasons, including that the perceived benefits of this mechanism were greater than the new taxes imposed. That research also found that SDLT and CGT avoidance were not primary concerns, but rather inheritance planning and privacy of assets were crucial driving forces. However, tax advisers did start advising their clients against enveloping properties due to the 15% SDLT and CGT implications.

[19] https://www.gov.uk/guidance/disclosure-of-tax-avoidance-schemes-overview. Accessed 5 May 2021.
[20] For details of these hallmarks see https://www.gov.uk/guidance/disclosing-vat-and-other-indirect-tax-avoidance-schemes-vat-notice-799#sect7.
[21] https://www.gov.uk/government/publications/views-and-behaviours-in-relation-to-the-annual-tax-on-enveloped-dwellings. Accessed 5 May 2021.

4. Industry Trends

In this section, key trends (current and emerging) in the property and construction industry are explored. These were primarily identified by way of a desk review, complemented by findings from the interviews. Key areas of focus were initially informed by the terms of reference – see Appendix A.

4.1. Co-living spaces

Co-living spaces are purpose-designed, dormitory-style accommodation for adults with shared spaces and amenities such as kitchens, co-working spaces, gyms, laundry facilities, gardens and sometimes entertainment areas (Harris & Nowicki, 2020). They are usually for single tenants with a busy lifestyle who want to live in the city.

Gandini (2015) similarly argued that developers who have co-living spaces in various projects characterise adverts as being focused on attracting workers who are enterprising, adventurous and adaptable. In recent years, tastes, preferences and lifestyles have significantly changed – led mainly by Millennials. Housing has not been exempted, with significant growth in co-living spaces. This has been a worldwide phenomenon as evidenced by its growth in the United States, Western Europe and parts of Asia.

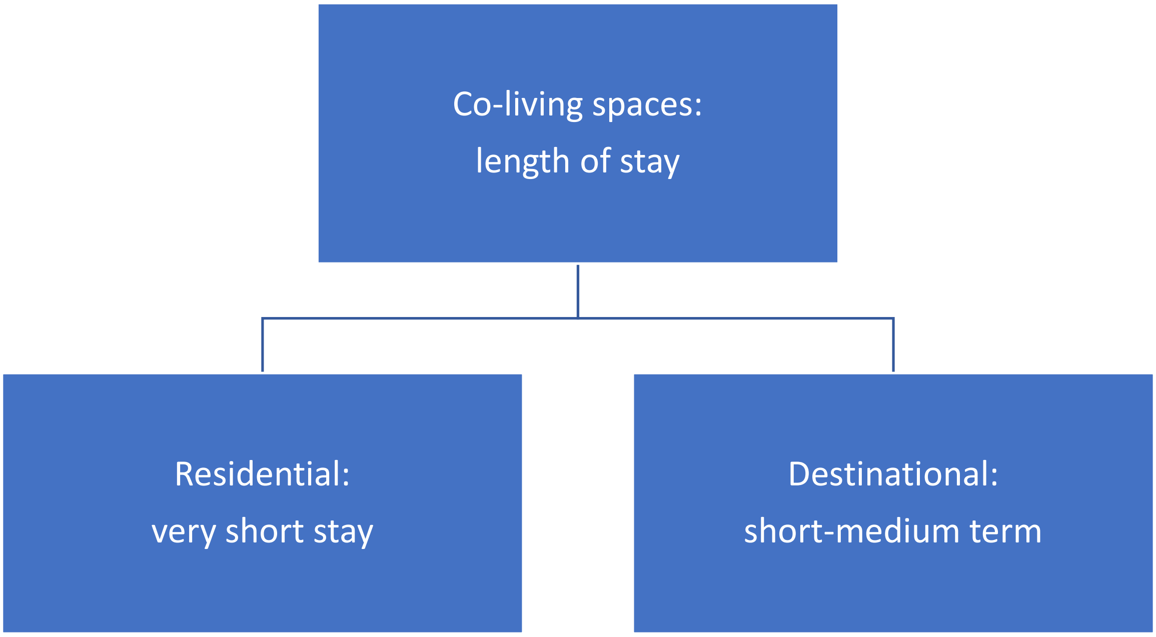
Consequently, several business models and offerings, categorised based on location, size of investments and operational mode, have emerged. Primarily, co-living spaces are for individuals in a specific age group and socioeconomic background (Millennial freelance). This means there is an enormous opportunity for innovation (Fix & Lesniak 2017). Harris and Nowicki (2020) and Almgren and Melander (2020) support this assertion by suggesting that co-living and co-working sites can be co-located. They, therefore, provide a sense of community for those who may not have a connection to specific neighbourhoods.

4.1.1. Tenancies in co-living spaces

Grounded on tenants' length of stay, two forms of co-living emerge: 'residential' and 'destinational' (Figure 2), suggesting very short-term versus short-medium term stays, respectively (Fix & Lesniak 2017).

The very short-term stays range from days to a few weeks, whereas the short-medium-term stays span from several weeks to months. Pepper and Manji (2019) argue that the term of leases tends to be more flexible than traditional leases. Some leases have been reported as being for a week or even one day (O'Connor 2019).

Figure 2: Co-living based on length of stay.



Source: Authors, 2020

4.1.2. Rent inclusions

As part of tenants' rent, providers or operators bear some costs associated with the co-living model. Different operators take on different costs as part of their operations; there is no uniformity among operators. Below is a list of operational expenses, although this is not exhaustive and not uniform for all operators.

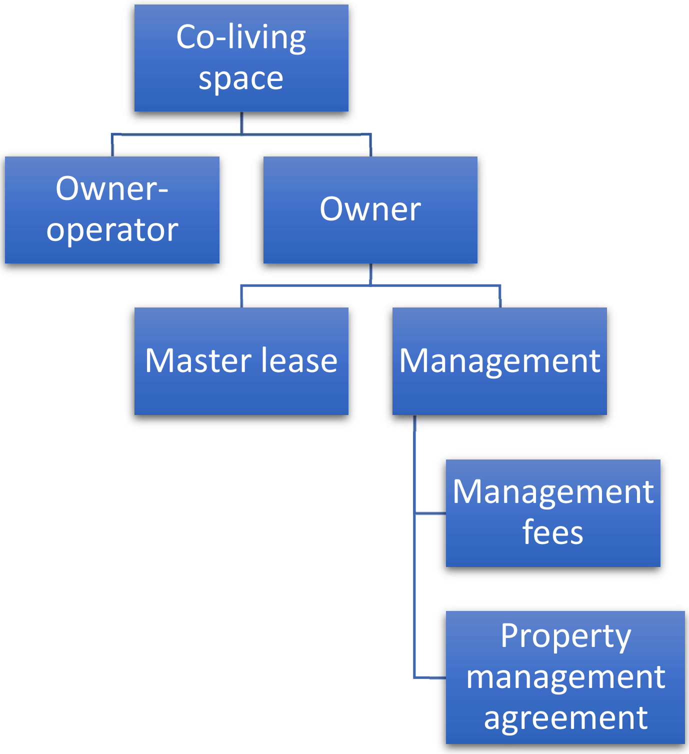
- Rent
- Bed and mattresses
- Utilities
- Washer/dryer
- Cleaning
- Supplies
- Internet.

4.1.3. Co-living business models

Pepper and Manji (2019) identified two primary business models in the co-living sector: owner-operator and operator. An owner-operator involves the owner of a building acting as the developer, owner and operator of the space(s). An operator model encompasses a relationship between an owner of a building and an operator managing the space (Figure 3). Pepper and Manji (2019) further identified that such a contractual relationship manifested in two ways: master lease agreement or management agreement.

The master lease involves a lease agreement between the owner and operator. The operator (or lessee) assumes a leasehold title to the property, pays rent to the lessor, and enjoys all the profits and tax benefits as an operator. The management agreement has two sub models. First, an operator may agree to operate space for a fixed percentage of revenues (gross or net operating income). Second, an operator may decide to adopt the hotel industry model where there is a percentage of return above a certain threshold in addition to a flat rate management fee.

Figure 3. Co-living business models.



Source: Authors, 2020.

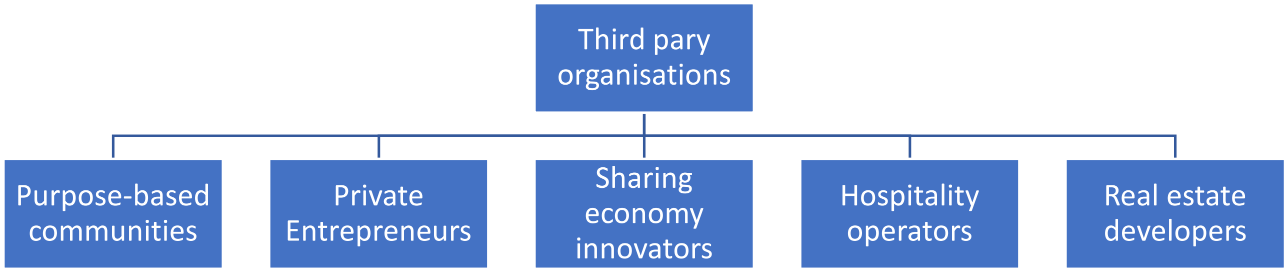
4.1.4. Operators in the co-living sector

Fix and Lesniak (2017) identified several arrangements of third-party organisations developing and operating the spaces (see Figure 4). These include:

- purpose-based communities
- private entrepreneurs
- sharing economy innovators
- hospitality operators
- real estate developers.

While the purpose-based communities focus on creating shared living spaces in a community-style approach, the private entrepreneurs include individuals who buy or rent a property and convert it to a co-living space. Those involved in creating co-living spaces create start-ups for this purpose and include investors once they have some initial success. Hospitality operators, including hotels and hostels, also offer co-living. Some real estate developers have begun to include co-living spaces in their projects, despite having a minimal understanding of these shared spaces' operational nuances.

Figure 4. Categories of operators in co-living space operations.



Source: Authors, 2020.

4.1.5. Trends and challenges

Since co-living spaces are an emerging form of housing tenure, there is a need to understand the subsector's nuances and identify issues that may be of concern. Many cities worldwide recognise this as a future form of housing. Real estate developers are investing and tending to build from scratch rather than buying and converting existing properties. Challenges arising include:

- Co-living is popular among Millennials and expatriates (temporary workers from interstate) due to the move-in readiness and lease flexibility. The trend is likely to continue as more Millennials enter the workforce and seek opportunities for global mobility (Almihda, 2018).
- Currently, Millennials[22] and Generation Zs[23] together account for 48% of the Australian population (this is set to grow). As they choose lifestyle and location over home ownership, the trend in co-living is likely to grow (Property Council of Australia, 2019).
- There are unconventional lease terms in this subsector, making it difficult to track revenues received.
- Co-living spaces are not a standalone asset class, i.e., residential or commercial (Patel 2020). Further, co-living spaces can be part of a larger building containing a gym, shops, co-working spaces, etc. Therefore, the applicable tax is unclear. In particular, there is a lack of clarity around whether co-living, as described in this section, constitutes commercial or residential property. Would the supply be input-taxed residential supply or taxable commercial supply? This is especially the case since several auxiliary services are being

[22] Millennials are the next generation after Generation X, born between 1981 and 1996. Source: https://www.propertycouncil.com.au/Web/Content/News/SA/2019/The_Millennial_Mindset__the_new_age_workplace.aspx. Accessed 21 May 2021.
[23] Generation Z is the next generation born between 1995 and 2009. Source: https://info.propertycouncil.com.au/property-australia-blog/talking-bout-their-generation. Accessed 21 May 2021.

provided along with the provision of accommodation and these other services are typically built into the rental price.

- There are a variety of business models. Generally, units are fully furnished and, in some cases, selected utilities are captured as part of the rent. These differences in operations pose a challenge to the determination of accurate incomes for tax purposes.
- The contractual relationship between the owners and operators can be complex (Fix and Lesniak, 2017). For example, co-living spaces may be owned and operated by separate companies. This could also be augmented by a contractual relationship with tenants.
- It is not clear whether some companies operating in this area are traditional construction firms. Technology firms that are predominantly based on the sharing economy as innovators may also be operating in the market.
- There are an increasing number of international co-living operators, such as Roam, WeLive and Medici Living, with developments across a range of sites and countries offering their clients the ability to move from one co-living community to another. In several instances these co-living spaces are combined with co-working spaces (Co-working Resources, 2021).

4.1.6. Industry insights

In the co-living subsector, interview participants mentioned affordability as its primary driver and possibly some social housing initiatives. Interview participants agreed that the subsector in Australia is not as established as it is overseas. They suggested that it is predominantly for the family unit, professional working couples and perhaps some ethnic groups. In terms of what to expect in the future, they suggested that because its development is still in the nascent stages, there are no significant emerging trends.

4.2. Build-to-rent

Increasing the volume of build-to-rent (BTR) construction projects is seen as an important way to help alleviate the problem of housing affordability (Graham, 2020). This is typified by recent concessions initiated by the Victorian Government[24].

- Provision of a 50% land tax discount for eligible new developments until 2040.
- Exemption from the absentee owner surcharge over the same period.

4.2.1. Introduction

BTR is gaining attention globally among different industry stakeholders. It increases the supply of rentals as properties are retained by developers and their financiers as investments with the view to secure ongoing income streams and (potential) capital gains (AHURI, 2019; Green, 2020; Megan,

[24] https://www.budget.vic.gov.au/budget-papers. Accessed 1 March 2021.

2019). In a BTR model, tenants may pay the market level or less (government subsidised)[25]. Investors are largely institutional investors (Australian Institute of Architects, 2020).

Long-term renting is seemingly becoming a norm for many Australian households that want access to city lifestyles and amenities. This is due in part to the very high price hurdles of ownership[26]. Increasing the supply of BTR properties provides households with the potential to realise their wants without having to purchase a dwelling.

Although BTR is relatively new in Australia, Allens Development (2020) suggests it is gaining momentum with the assistance of several projects that have proven to be financially viable, despite several policy challenges. For example, the *Australian Financial Review* reports that Mirvac has 1635 BTR apartments in the pipeline worth $1.12 billion, while Lendlease has 5504 potential BTR apartments worth $2.1 billion (Sweeney, 2020). One of the keys to success in these endeavours is how the funding is structured to deliver the final product.

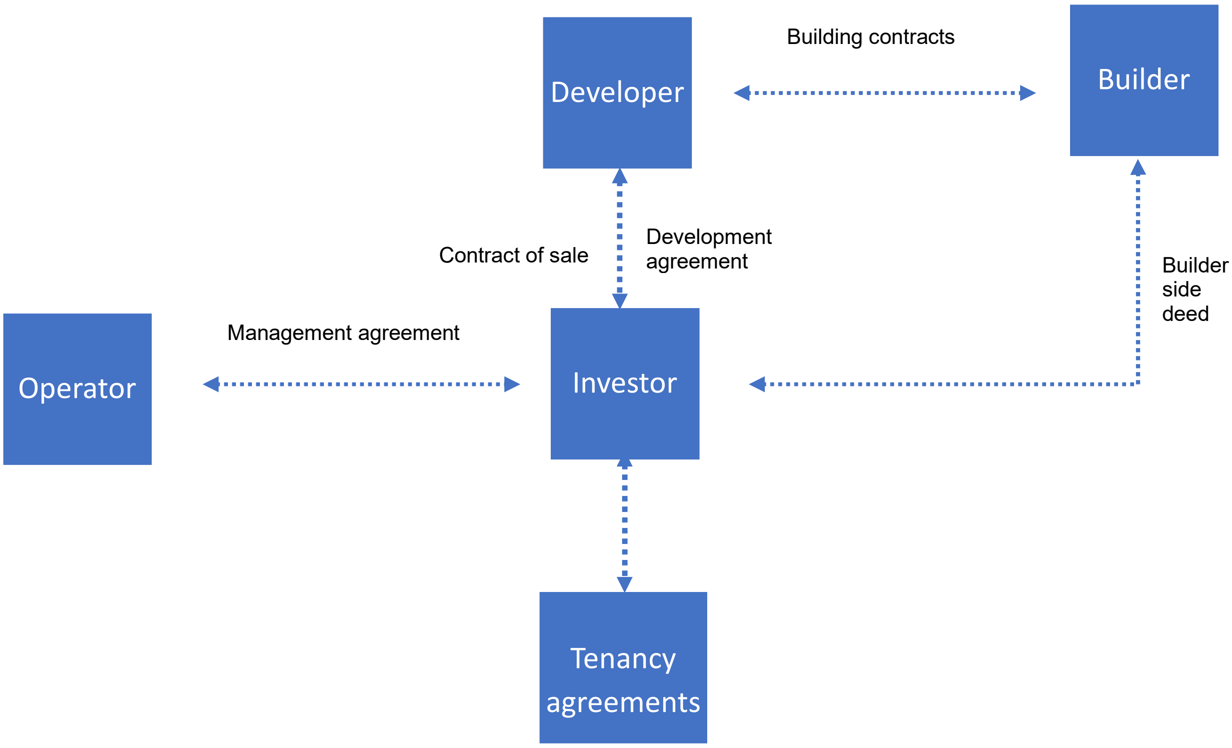
> Greystar, a global leader in rental housing, entered the Australian market in 2017, ostensibly supplying apartments for rent. It has $200 billion in real estate under management, $15 billion in developments underway, and 660,000 apartments under management. Greystar operates via three independent lines of business: investment management; development and construction; and real estate operations. Greystar expects to continue expanding its portfolios. Such an operational model requires serious attention because of the potential tax implications, where three related businesses are under a single entity's operations. (Greystar, 2017)

4.2.2. The model of build-to-rent operation

Figure 5 maps a typical BTR model. A BTR project is initiated by a developer based on a contract of sale agreement with an investor upon completion, or an investor approaches a developer via a development contract agreement. Similarly, an investor may also contract a builder to execute a BTR project. Once the project is complete and held as an investment, the units are leased to tenants and an operator is contracted to manage the investment project through a management contract. The most favourable structure for the management of the investment is usually through a managed investment trust as foreign investors are often involved (Green 2020).

[25] Governments may identify such establishments with a view to help lessen housing affordability constraints.
[26] For example, Boymal et al. (2013) show that households are having to make significant distance trade-offs to purchase a property at the same price point.

Figure 5. Model for build-to-rent development and operation.



Source: Adapted from Allens Development (2020).

Assemble – a hybrid BTR/BTS approach
"The idea is simple, you rent your home, while you save to buy it. Your rent is agreed up front, and your purchase price is fixed when you sign up, giving you stability while you save, and the freedom to leave if life takes you elsewhere."

Source: Assemble (2021) [27]

4.2.3. The UK and US experience

In the UK there are about 50,800 homes completed, 36,700 under construction and 84,000 in the pipeline (Savills 2020). The UK's national planning policy framework, published in 2018, has clarified the BTR sector to mean:

> *"… purpose-built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more and will typically be professionally managed stock in single ownership and management control".*

[27] https://assemblecommunities.com/future-proofing-your-home-ownership-ambitions-as-property-prices-continue-to-surge/. Accessed 28 April 2021.

It implies that asset developers or owners are expected to retain the development over an extended period and lease all units to tenants on specified terms. BTR is now the second largest form of tenure in the UK (Allens Development 2020).

Multi-family housing (the US equivalent of BTRs) is defined as a structure type that contains several housing units within a single building (Schmitz and Urban Land Institute, 2000; Hendron and Engebrecht, 2010). They are usually close to services and amenities to attract those who seek proximity to locally provided infrastructure (Larco, 2010). Approximately 10% of the US population lives in multi-family apartments, and it represents one-third of all institutional investments (Green, 2020). The asset is classified as a commercial property and regulated as such by inference. The BTR subsector comprises more than 14.5 million units across metro markets (DFP 2020). The National Multifamily Housing Council estimates the sector's worth at US$3.3 trillion, with the majority of this capital provided by banks, life insurance companies, commercial mortgage-backed securities, private capital or government-backed lending programs. DFP (2020) argues that the success of BTR in the US is premised on the competition in the US financial system, which allows private capital and banks to structure their deals and carve a niche for themselves.

4.2.4. Trends and challenges

Given the Australian BTR subsector is still in its infancy, we look to more established markets in our discussion of trends. In the UK, build-to-sell developers are selling units to BTR developers and investors. It is reasonable to expect that this phenomenon may soon appear in Australian markets. Similarly, the conversion of established apartments may also be seen following UK patterns.

Growth is strongly supported by local and overseas institutional investors and is also attracting capital from major banks (Green, 2020). Further, there appears to be some indication that state governments are in favour of more BTR projects through the reduction in some form of taxes (Fry, 2020). Given the likelihood of its growth, there are several challenges, including:

- Clarity on a working definition for the subsector. This will ensure that regulators know exactly which projects are classified as BTR for GST purposes. In the UK, for example, a working definition has been provided and incorporated into the planning policy framework.
- Asset classification. The asset is for residential purposes, but the primary owners are large-scale investors. In Australia, there is no clarity around whether BTR is classified as a residential or commercial asset. It appears that BTR is treated as supply of residential accommodation and is therefore input-taxed. In the US, multi-family (a subsector of BTR) is a commercial asset, whereas in the UK it is residential. Classifying the asset would likely avoid ambiguities with respect to determining taxation obligations.
- How the project development funds are treated in the light of the investment achieving a stable rental income over the long term.

- How to treat superannuation and pension funds that participate in the market as either debt or equity partners.
- Determining how to handle cases where different funding options and structures are used, i.e., when a company could operate as both an investor and debt capital provider.
- Appropriate recognition and treatment of situations where builders mask their BTR construction projects as build-to-sell.
- How to treat the sale of dwellings over a long-term investment horizon.
- How complex relationships are managed; for example, the investor and a management entity that operate the investment (or in-house teams from the development company) serve as operators who manage the operations of the assets after development.
- Changes to government levies could stimulate or slow activity. The investments from local and foreign institutional investors are usually through managed investment trusts. Due to the high withholding tax rate, this seems to be impeding activity (Allens Development, 2020).
- GST is recoverable in the case of build-to-sell models (on land and construction costs) in many states in Australia but not available in the case of BTR in all states, thereby making it unattractive to investors (PwC, 2020).

The BTR subsector is fuelled by changing attitudes to home ownership, demographic changes, different lifestyle choices and rising property prices (Dawson, 2017). Williams (2021) indicated that Millennials and Generation Zs usually prefer renting to home ownership due to mortgage costs, preferring to spend on lifestyle choices and flexibility to move with emerging career opportunities. Similarly, Nelson Alexander real estate, after a broad survey of Australians aged 18+, found results indicating that Millennials prefer to live in urban environments within walking distance of amenities, close to work, family and friends, with minimal maintenance costs and flexible spaces (Nelson Alexander, 2020).

BTRs potentially offer a sense of community, access to social and work networks, flexibility and security of tenure, which are fundamental to the housing needs of Millennials. Therefore, in future, BTR is expected to become a dominant part of the Australian property market as demand increases.

‘Reinvesting’, a situation where individuals rent in a preferred suburb but buy an investment property in an affordable suburb to accumulate wealth and build equity capital through capital gains, is also reportedly becoming a more popular option (BMT, 2019). This allows Millennials and Generation Zs to maintain their lifestyle and simultaneously own a home, which may also fuel growth in this sector.

Finally, a further source of demand (albeit of a particular form) could be from Generation Y as they move into the next stage of the life cycle (coupling and family life). Some predictions include increased demand for medium-density housing including bigger apartments, townhouses and villas (The Real Estate Conversation, 2018).

From a taxation perspective, the growth of BTR is significant. This asset type has the potential to rise rapidly due to many of the factors discussed. In particular, as home ownership becomes more difficult for the younger generations the option to rent for life is likely to become more common either through choice or circumstance.

As these developments increase, there may be a need to examine how GST applies to this asset class and whether any legislative or administrative changes are needed with a view to improving housing (as in the right to shelter rather than to ownership) affordability. It may also be the case that developers may look to apply aggressive tax planning in an attempt to recover GST input tax credits. Therefore, this is an area of the property and construction industry that warrants specific attention from the ATO and policymakers.

4.2.5. Industry insights

The BTR subsector is gaining momentum in Australia. Industry insights from the interview participants indicated BTR will grow significantly in the next 5–10 years. Some tax rules may need to change; for example, land tax rules are thought to be undermining growth. The evidence is seen in the backlash to the Victorian Government’s increase in land taxes for such developments in the 2021 budget statement.

According to the interview participants, BTR growth will be driven by housing affordability, inter-generational changes, long-term investors’ involvement, banking and finance, and prominence in the US market and other parts of the world. Australian banks are seen to be quite conservative in their business and reluctant to participate in some of the complex financing structures seen in other parts of the world.

Interview participants suggested that Australian banks are familiar with the finance/develop/sell model rather than the proposed finance/develop/hold/repay model used in BTR. As a result, private financiers, including wealthy families and high net worth individuals or family groups, are stepping in to provide primary financing for projects. These private financiers previously focused mainly on mezzanine financing. Therefore, there is an emerging trend in financing BTR as a long-term investment.

Despite affordability being one of the factors touted by stakeholders as driving BTR’s growth, interview participants suggested that this is not the primary focus of developers. In practice, rental rates are high in the BTR subsector and current developments are focused on the high-end market.

Another emerging trend is developments in regional areas focusing on security of tenure for tenants. Such tenants are not obsessed with the city lifestyle or living closer to amenities. Interview participants mentioned that tenants prefer long-term tenure security over city lifestyle because of the low likelihood of owning an affordable city home. If BTR takes off, such tenants may rent and live in those residences indefinitely.

According to interview participants, specialist disability accommodation in the BTR subsector is also an emerging trend that may grow in coming years. Private financiers may provide capital for the development of such assets as long-term investments. Similarly, there is the possibility of some of these private financiers setting up managed trusts to manage these investments, ostensibly to manage risks. One of our participants mentioned that the interest in disability support accommodation from private financiers is based on suggestions that the potential return on that investment may be as high as 14%. Interview participants suggested that the operations in that space can lead to complex tax structures.

4.3. Retirement living and aged care property

In many countries, life expectancy is increasing and birth rates are declining, leading to a growing aged cohort. As noted by Henkens et al. (2018), not only have life expectancies been increasing consistently over the past several decades, but they are projected to continue in that trend for the foreseeable future, with substantial differences among sociodemographic groups as well as from one country to the other (Murray et al., 2015).

In Australia, retirement villages are a popular living option where residents live in self-contained facilities in a community environment. It is often defined to exclude higher care, inpatient nursing and rehabilitation service provision. Common retirement village products and services include accommodation, meals, aged care and other activities and events. With an approximately $5 billion market size and average industry growth of 4.7% from 2016 to 2021, the retirement village subsector in Australia is expected to keep growing over the next few years to cater for the growing ageing population (Richardson, 2021).

Evergreen Lifestyle (2021) reports that there has been a shift internationally towards the ‘life right’ purchase model, referred to as a ‘licence to occupy’ in Australia and New Zealand, among other emerging trends in retirement living. In this model, there is a partnership between the retiree and the developer. The retiree gains a life right (usufructuary interest) in the property with security of tenure for life. The ownership rights of the physical property, however, belong to the developer, who has an incentive to keep the estate in good condition as its longevity is directly tied to their return. Many of the improvements that would require a special levy in a sectional title village are funded by the life right developer, who also manages the estate on behalf of residents.

As Evergreen Lifestyle (2021) notes, two key benefits of the right of occupation model are: the consistent investment by the developer, thus lowering the deterioration of the estates and costs of repair, especially when villages begin to age. And two, the life right model leads to flexible pricing. In essence, life right units can be purchased at a discount in exchange for a reduced capital return. Depending on the retiree's financial resources, this can be a huge benefit. The financially strong developer takes a long-term view on returns.

The trends in aged care and retirement village property and developments have been focused on demographics, lifestyle and design, and affordability. Over the past 5–10 years the market has also been influenced by subsector demands and the push to a greater focus on homecare, particularly in aged care. This has been led by the increasing percentage of people in Australia over the age 65 compared with previous decades. Based on the 2016 census the percentage of Australians over the age of 65 increased from 13% in 2006 to 15.7% in 2016, with an expected increase to 21% by 2036 (ABS, 2017; Knight Frank, 2017a).

The major trends in this property subsector have been based around the following features:

- demographics
- penetration rates and future demand
- design and lifestyle factors
- ownership and funding models
- industry consolidation.

4.3.1. Demographics

In recent history, there has been an increasing demand for places in retirement villages and aged care facilities. There has also been a strong desire to age in place (Productivity Commission, 2015). Longer life expectancies and the Baby Boomer generation moving into retirement age have significantly driven up the percentage of the population over the age of 65, from 12.3% in 1999 to 15.9% in 2019.[28] This has already led to a stronger focus on self-contained living units and aged care places and a greater emphasis on homecare options. New ways of facilitating ageing[29] in place continue to develop and grow in popularity (e.g., Sinclair et al., 2020 a, b and Thomas et al., 2020). The focus on homecare options for aged Australians is partly driven by the need to reduce the burden of public-funded aged care places.

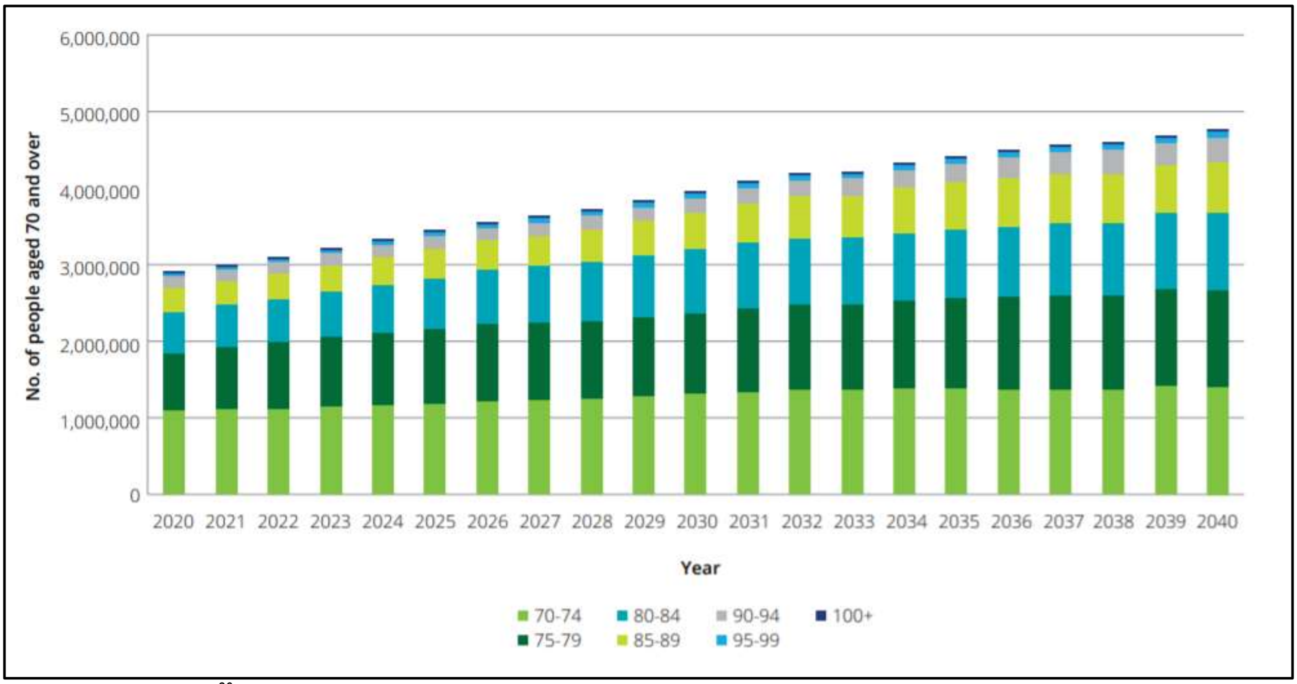
Continually growing demand is expected, according to the most recent Aged Care Financing Authority report (ACFA, 2020):

[28] https://www.abs.gov.au/ausstats/abs@.nsf/0/1CD2B1952AFC5E7ACA257298000F2E76?OpenDocument. Accessed 2 March 2021.
[29] Ageing in place is defined here as the desire to remain within the immediate locality (not necessarily the same dwelling).

> *"While the COVID-19 crisis may pose sizeable dislocations to both the demand and supply of subsidised aged care services in 2020, in the longer term the demand for all aged care services and support required by older Australians, including subsidised services, will continue to expand with the ageing of the population".*

This expansion of the aged population is significant, as shown in Figure 6.

Figure 6. Ageing population: number of people aged 70 years and over, by 5-year age cohort, 2020 to 2040.



Source: ACFA (2020). [30]

These observations show that there will be a need to provide a range of accommodation options, including specialist facilities. This will require specialist aged care properties (private and public) and property accommodation suitable for over 65s embedded within the community.

4.3.2. Retirement living design and lifestyle factors

A key consideration for retirees is the question of where to retire, which constitutes a complex decision-making process referred to by Granbom et al. (2014) as "residential reasoning". In response to these needs, the main housing options available to retiring workers include single detached/multi-family residential dwellings (self-contained living units), leisure communities/congregate housing, shared accommodation with friends or family, or living abroad or 'on the road' in mobile homes (Henkens et al., 2018). With decreases in morbidity and increases in longevity, this relocation decision, or residential reasoning, is of paramount importance as it determines location and type of

[30] https://www.health.gov.au/sites/default/files/documents/2020/07/eighth-report-on-the-funding-and-financing-of-the-aged-care-industry-july-2020-eighth-report-on-the-funding-and-financing-of-the-aged-care-industry-may-2020_0.pdf . Accessed 10 March 2021.

accommodation and quality-of-life dimensions such as financial wellbeing and access to post-retirement work (Golant, 2015; Koss and Ekerdt, 2016).

In Australia, retirement villages are a popular retirement living option, where residents live in self-contained facilities in a community environment. It is often defined to exclude higher care, inpatient nursing and rehabilitation service provision. Common retirement village products and services include accommodation, meals, aged care and other activities and events. With a $5 billion market size and average industry growth of 3.5% from 2016 to 2021, the retirement village sector is expected to keep growing over the next few years to cater for the ageing population (Richardson, 2020).

4.3.3. Ownership and funding models

Retirement village and aged care ownership and funding models are playing a major role in demand and financial security for residents. The main ownership models across the retirement village sector are:

- freehold
- leasehold
- loan/and or licences
- rental.

Each of these models have an impact on the level of asset security, entry cost and ongoing management fees for the occupier and the income streams and operating costs for the village operator.

Freehold

The freehold title for a self-contained independent living unit (SCILU) in a retirement village is based on a strata title according to state/territory legislation. The operation of the title is similar to any other strata-titled property in that the buyer pays for the unit outright and has sole occupancy, but can be liable for ongoing charges (such as maintenance of common property and grounds). However, unlike typical strata-titled properties, sale restrictions agreed with the village owner/operator at the time of purchase might exist.

According to Cradduck and Blake (2012):

> *" a pure freehold Retirement Village, however, is rare. Even when the SCILU is freehold tenure, the Retirement Village usually is operated on the basis that as condition of the purchase the resident must lease the SCILU to the RV which then sub-leases it back to the resident. It is envisaged that this sub-lease arrangement may be useful for asset protection in later marriages. The sub-lease may be to both partners while the freehold is held only by the original purchaser and, while permitting the survivor to remain in their home for the rest of their life (or as long as they otherwise choose to remain there) ultimately becomes the property of their estate with distribution as per their will after the death of both. It is suggested, however, this can be confusing as the sub-lease can impose*

> *conditions more commonly found in RVs but not in strata title complexes, but the RV is marketed on a 'freehold' basis. Further confusion can arise in respect of the retirement-style villages."*

These varied freehold arrangements have a significant impact on the income that is generated by the owner of the retirement village, especially in relation to the sale and any capital gain disbursement that may be claimed by the village owner on the sale of the SCILU.

Leasehold

The leasehold interest for a SCILU in a retirement village is based on the resident paying a lease fee (lump sum) usually being equivalent to its market value. Ongoing maintenance charges are also likely to be part of the agreement. When the lessee exits the lease or on resale of the SCILU, the retirement village operator pays the lessee for the balance of their leasehold interest.

Loan and/or licences

A loan or licence arrangement involves the resident making payments to the retirement village operator in the form of an interest-free loan. This interest-free loan grants the resident the licence to occupy the unit and access any of the facilities in the retirement village. When the resident departs, the SCILU is sold or a claim is made by the estate of the resident and the residual loan is repaid to the resident or their estate. Such departures generally incur a deferred management fee, which is offset against the repayment of the loan. There also may be an apportionment of capital gain, or alternatively a share in the capital loss to the resident. In some instances, the loan is linked to a licence to occupy. In others, the licence to occupy exists independently. This is the most common tenure structure in many states of Australia (Blake and Crudduck, 2010).

Blake and Crudduck (2010) also state that:

> *"the licence to occupy ('LTO') model has a significant place in the RV market. In a LTO village, residents are able to occupy their SCILU upon receipt of a Certificate of Occupancy. From the resident's perspective their ingoing costs are reduced, as there is no requirement to pay transfer fees or stamp duty on the transaction because they are not in receipt of an interest in land".*

Rental

There are some rare situations where the resident occupies their SCILU under a rental agreement, but it is not a common form of occupancy in the retirement village market. In these situations, the tenancy does not give the tenant an interest in the SCILU or the land as would be the case if this was a leasehold interest. In these cases, the resident becomes a tenant under the relevant state residential tenancy acts.

The actual ownership model that the retirement village operates has an impact on the operating income and capital gain that can be generated by the village operator from the resale of the SCILUs.

4.3.4. Potential retirement village occupancy taxation issues

The various ownership/occupancy models produce differing circumstances for any capital gain that is generated during the occupation of the SCILU. For freehold ownership, any capital gain on the sale of the SCILU would be available to the owner or their estate. Any commission paid to the retirement village operator would be income for the management company. When the SCILU is occupied on a lease or licence basis, any increase in the SCILU value could be considered income for the operating entity.

4.3.5. Aged care

The issues affecting retirement village trends can also apply to the aged care sector. The cost of providing aged care beds and the continual need for more beds has shifted the focus of government strategy to homecare options (Department of Health, 2020). The need for additional retirement and aged care property is short and long term. It is estimated that there will be a requirement for more than 70,000 aged care beds in the next five years.

According to the Commonwealth Government's 2015 report on intergenerational change the number of Australians 65 years and over will increase from 3.6 million in 2015 to 8.9 million by 2054-55. There will be a need to provide more accommodation and specialist facilities, with this requirement to be met by specialist aged care properties supplied by the private and public sectors plus properties suitable for people over 65 embedded in the general community residential sector (Csesko and Reed, 2009). Emerging property trends flowing from the over-65 demographic include downsizing to smaller residential accommodation within the same locality to retain social networks and self-contained living units within mixed residential developments close to transport, daily shopping requirements and medical services.

Home Care Packages have been introduced to provide a range of services in the home that were traditionally provided by the aged care housing sector. This program supports older Australians with a range of care needs to continue to live independently in their own homes and 'age in place'. This support is provided through a range of packages and a mix of services that can include:

- help with household tasks
- equipment (such as walking frames)
- minor home modifications
- personal care
- clinical care such as nursing, allied health and physiotherapy services.

It is anticipated that the provision of Home Care Packages will assist in reducing the requirement for specialist aged care homes, with aged residents receiving medical and other services in their existing or downsized properties (Department of Health, 2020).

From a property trend perspective, Home Care Packages should reduce the need to build some specialist aged care residential facilities, which cost more than the service packages. In-home aged care can also affect the type of housing stock available, with a single aged resident or couple perhaps occupying a large multi-bedroom house.

4.3.6. Industry insights: Aged Care

Changes in the aged care sector in the short to medium term will be based on recommendations from the Royal Commission into Aged Care Quality and Safety and the issues following COVID-19 during 2020 (Royal Commission into Aged Care Quality and Safety, 2021)[31]. From a property perspective, there will be a greater focus on public, not-for-profit and private aged care providers.

There have been changes to design. Aged care now has individual rooms with a bathroom (couples can have two rooms). There is a trend for an increase in privacy and personal space. The provision of common rooms and facilities are an important aspect of current aged care accommodation design. The Royal Commission also highlighted the requirement for additional aged care premises in regional, rural and remote Australia. Recommendations were also made in relation to the provision of sustainable capital financing.

There is a conundrum around owning your own home and going into aged care. Income from a primary residence is taxable. If you sell a main residence before renting, then you may not be eligible for an age pension. Issues around CGT also emerge if the family home (post-CGT only) is rented while the owner is in aged care.

Not-for-profit (NFP) organisations operate in the aged care sector, which provides tax benefits even if the NFP is not a charity. An NFP operator can make a profit over the cost of operations, but does not necessarily have to pay income tax. While this does not pose any direct threats to tax compliance, there is a policy question around whether GST should apply to supplies where all conditions for taxable supply (s.9-5, *GST Act 1999*) are met but for the entity type being an NFP.

From a tax compliance perspective, the various combinations of ownership structures and leasing make this subsector of the property market complex. The trends discussed in this section indicate that the future will be determined by the Royal Commission recommendations, in particular that there should be a greater focus on in-home care. As greater transparency and accountability requirements are legislated, it may be the case that tax compliance also increases. The trends outlined do not

[31] https://agedcare.royalcommission.gov.au/ Accessed 10 March 2020

seem to pose any immediate challenges to tax administration. Nevertheless, there are several policy questions that may have tax consequences, particularly in relation to the role of NFPs and the new models in retirement village living.

4.3.7. Community living and land lease

An emerging and developing trend in the community living sector for the 50 plus age group is the development of ‘land lease’ communities. One of the major developers in Australia (and the United States) for this type of community living is Halcyon, which creates and manages these lifestyles (or land lease) communities and specialises in the land lease concept. The Residential Land Lease Alliance (2016) states that more than 70,000 Australians are now living in 900 land lease communities; this sector is expected to continue growing.

Land lease differs to strata title, house and land lease and licence title with the owner purchasing or erecting the improvements (house and subsequent buildings) but taking out a long-term lease on the land, with an annual payment for the land rental only.

In the Halcyon model these lifestyle community living developments for over 50s are based on no mortgages, investors or renters. Instead, the over-50 buyers, particularly in capital city markets, will have sold their existing freehold or strata title property and the proceeds from the sale are used to buy into the land lease community, with money left over. The assumption is that the biggest proportion of the property sale comes from the land component, so just the building value is being purchased in the land lease community. If the over-50s vendor is also downsizing, there would be a greater cash residual from the freestanding property sale and the building-only purchase in the land lease development.

According to its website, Halcyon’s lifestyle communities are exclusively for owner-occupiers aged over 50. The structure provides that there are no mortgages, with the buildings being purchased outright, and that investors or renters are not permitted. The Halcyon marketing material states that this reinforces a strong sense of community and security.

In Queensland, land lease communities are governed by the *Manufactured Homes (Residential Parks) Act 2003* (the Act). This brings financial certainty and legal protection while being less complex and more transparent than some other retirement village ownership structures and legislation.

The Halcyon model

With the Halcyon model, the new buyer purchases a stand-alone home and signs a lease (site agreement) to pay rent (site fees) on the freehold land on which the home sits. The land remains the property of Halcyon. Under the Act, you hold your land lease in perpetuity. The site agreement is the buyer's (building owner's) contractual right to occupy the land and also gives them non-exclusive use of the community's common areas and communal facilities.

Halcyon then looks after the streets, communal spaces and recreational areas. On this basis the building owner does not carry out any front yard or pool maintenance.

Under the land lease model, the following steps occur:

1. On settlement there is no stamp duty because there is no land component in the purchase.
2. Once settled, a site agreement is completed.
3. Under the land lease arrangement the owner is not locked in for any term. Unlike a traditional retirement village, there are no exit fees, deferred management fees or refurbishment costs to pay when the property is sold.
4. If the property is to be sold at any time this can be carried out through the Halcyon onsite sales consultants or the vendor can appoint an outside agent to handle the sale.
5. On sale, the vendor keeps 100 per cent of their capital gain.

The land lease model typically wraps many household expenses into one weekly site fee. Depending on the provider, the weekly site fee can cover aspects of property ownership such as homeowner support, transport options, electricity options and social options.

Source: Halcyon (2021) [32]

4.3.8. Trends and challenges

Recurring themes included:

- demand for increased availability of retirement living options
- increased demand for diverse housing types as well as community, lifestyle and wellness offerings
- increased demand for customisation. Seniors are now demanding housing that caters to their specific needs, as against the earlier approach of one size fits all
- increase in ageing-in-place, as against institutionalised and reactive care provision
- location diversity (increase in urban locations and vertical living in addition to traditional suburban and rural models)
- rural and suburban models shifting away from affordability towards lifestyle choice

[32] https://www.lifebeginsathalcyon.com.au/fees-and-cost-living Accessed 10 March 2020

- integration of inner-city models into existing regular communities. The previous trend where housing for the elderly is segregated from regular housing with the attendant ageism that results is expected to be replaced with housing that is situated within a new, large housing development or sited strategically within an existing community along with other accommodation types to enable integration of the elderly with other demographics
- designing apartments for life, so that any level of care can be received. Typically, the housing/apartment for life unit offers accommodation in which any level of care can be received. It includes housing particularly tailored to the elderly, alone or with relatives or care providers. This captures design decisions that prioritise access and ease of usage for elderly and/or disabled people, as well as for other demographics
- a desire for international trends such as UBRCs (university or school-based retirement communities, where elderly residents connect to educational institutions to enable teaching, learning and facility sharing)
- transitioning from downsizing to smart sizing. This means elderly people are not necessarily transitioning into smaller houses but into housing that suits their age-specific needs, such as easier access to public transport, lower maintenance needs, increased affordability and availability of guest accommodation (for visiting children/grandchildren, etc.). Smaller sizes are no longer the key consideration as long as these amenities/benefits are available
- augmenting with smart home technology
- spaces for physical activity
- focusing on hospitality (hotel and resort amenities, beautiful and serene environments).

In addition to these observations, it is important to acknowledge the recommendations of the Royal Commission into Aged Care,[33] which will have some influence on future demand. Notable excerpts are presented in Appendix C. These excerpts show that the degree of oversight in the sector is set to increase significantly, including for building providers. They also show there is a major focus on design standards, a variety of options and the construction code. Interestingly, the Commission also recommends a capital grant program.

Contextualising these initiatives is the financial state of the sector. In the Eighth Aged Care Financing Authority Report (ACFA, 2020), it was indicated that profitability has decreased across the sector:

> *"The overall financial performance of **residential aged care providers** declined in 2017-18. …..*
>
> *"The financial performance of residential care providers broadly stabilised in 2018-19. The Average Earnings Before Interest, Tax, and Depreciation (EBITDA) per resident for residential care providers was $8,523 in 2019-18, down slightly from $8,746 in 2017-18. This followed the 24 per cent decrease from 2016-17.*

[33] https://agedcare.royalcommission.gov.au. Accessed 10 March 2021.

> *"The 2018-19 financial results incorporate the one-off $320 million increase in revenue resulting from the Government's 9.5 per cent increase in ACFI that applied between 20 March and 30 June 2019. In the absence of this one-off increase in revenue, the overall financial performance of residential care providers in 2018-19 would have declined considerably to around $7,000 or a 20 per cent decrease on 2017-18. …."*
>
> *"The number of residential providers reporting a loss in 2018-19 was 42 per cent."*
>
> *"Feedback from consultations suggests there is a growing number of smaller residential care providers, particularly in regional and remote areas, facing significant financial stress and seeking to leave the industry."*
>
> *"Sixty-nine per cent of home care providers achieved a net profit in 2018-19, …The for-profit providers, after being the strongest performing provider group up to 2016-17, reported by far the worst results for the second year in a row. The for-profit providers recorded average EBITDA per consumer of $728 compared with $1,320 reported by the not-for-profit providers."*
>
> *"Planned building activity remained significantly lower for the second year in a row compared with the previous years."*

A general theme of the report (ACFA, 2020) is that costs and demand (albeit spread unevenly) across the sector are growing faster than revenues. Looking ahead it is expected that demand for homecare services will grow. Further, this is likely to be accompanied by more diverse demands as well as higher expectations about quality. In contrast, the supply of new or renewed stock, due to the uncertainty as well as cost pressures cited by operators, is likely to be dampened.

4.3.9. Industry insights: Land Lease

The land lease home ownership model has been widely adopted in Queensland and there is increasing demand in other eastern states. Interview participants expressed concerns about the long-term function and maintenance of such community developments that rely on the ongoing management of facilities. If these community facilities are not maintained, renovated or renewed as required the overall value and function of the development can be affected. It was stated that these concerns have already manifested in the community/retirement communities that were developed in south-east Queensland 20 to 25 years ago, with an interview participant stating that some of these older community/retirement communities were no longer desirable for new entrants.

The issue of resale and potential capital gain/loss was another aspect raised, as any potential capital gain from the sale of individual homes in these communities related directly to the ownership model. Strata title schemes offer the most security in relation to potential capital gain. The owner of a house in a land lease community would only realise a capital gain from the actual structural improvements they build or purchase and if not maintained this could actually result in a capital loss on sale or transfer.

Land leasing and other forms of community housing were considered to be an affordable option but more suited to those downsizing from a higher value property, as the lower entry price would allow the entrant surplus cash for day-to-day living. The tax implications of the land lease model, especially in relation to GST, are unclear. A further detailed investigation into the types of business structures and operating models used by developers is needed to better understand the state of play.

4.4. Land banking

Land banking is the practice of assembling and reserving large parcels of land for future development (Syed Abu Bakar et al., 2018). It is a business strategy where large amounts of land are purchased, banked (for a period of time) and then developed. This type of approach is likely to be more attractive during downturns, especially if developer margins are tight.

4.4.1. Trends and challenges

Land banking has concerned regulators in Australia and overseas. In Australia, the Northern Territory Government introduced a ‘Property Activation Levy’ in 2019 to encourage owners to activate their properties and revitalise Darwin CBD. This levy, on the unimproved capital value of the land, applies to vacant undeveloped land (2%) and ground floor non-residential buildings in Darwin CBD (1%) (Northern Territory Government, 2020). There is relief from this levy in 2020 due to the COVID-19 pandemic (Northern Territory Government, 2020). There are no other jurisdictions in Australia currently implementing a tax or levy relating to vacant land.

It is important to note that the Federal Government provides a tax deduction for the cost of holding vacant land. Several entity types (namely individuals, trusts and self-managed super funds) were removed from this entitlement in July 2020 but entitlement remains for corporate tax entities, superannuation funds managed investment trusts, public unit trusts and unit trusts or partnerships where all the members are one of the aforementioned entities (Australian Tax Office, 2020).

Vacant land tax differs from vacant property tax. Vacant property tax has been introduced in Australia at federal and state level. The Federal Government charges a residential vacancy fee for foreign owners of residential dwellings who leave them vacant for more than six months a year. The state of Victoria has a vacant residential land tax for vacant properties in the metropolitan and urban areas of Melbourne. Victoria, ACT, Queensland and New South Wales have all implemented a foreign absentee owners’ surcharge of varying amounts for foreign owners of properties who do not live in Australia (PwC, 2021).

Vacant land tax is not unique to Australia. Since the 2008 global financial crisis (GFC), European land, particularly in urban areas, has been left undeveloped and vacant. This vacant land has reduced the opportunity for residential properties to be constructed, which has affected housing supply (Scottish Land Commission, 2018; Irish Government, 2020). This vacant land has also had a negative impact on the character of those areas (Scottish Land Commission, 2018).

- Ireland passed a vacant land tax levy in 2015. Its intent is to encourage the efficient use of residentially zoned sites, therefore increasing the supply of housing and reducing the number of derelict sites in urban areas. As of 2019 this levy amounted to 7% of the land value and is considered a rate high enough to incentivise an increase in the supply of housing rather than a revenue-raising measure (Irish Government, 2020).
- Wales, in negotiation with the UK government is continuing to seek powers for a Vacant Land Tax (Welsh Government, 2021).
- In Scotland, the Scottish Land Commission proposes to introduce a compulsory sale order power that would enable local authorities to require the sale of problematic derelict buildings or vacant land so that they may return to productive use (Scottish Land Commission, 2018). Compulsory sales orders differ from compulsory acquisition laws. Compulsory acquisition laws allow a government to take ownership of land without the willing consent of the owner. The compulsory sales order proposed in Scotland would allow the local council to sell the land at auction to a new owner, who would bring the land back into productive use.

Such levies introduce several practical issues:

- There were difficulties reported within local government authorities (LGAs) regarding their ability to resource the administration of the levy registers. LGAs in Ireland called for a central process to manage these registers (Irish Government, 2020).
- LGAs reported difficulties coordinating and procuring the expertise required to identify and value the sites (Irish Government, 2020).
- The initial levy directive in Ireland raised questions on what constituted ‘vacant’ land. The directive has subsequently addressed loopholes relating to instances when developers are permitted to adopt interim uses without having to pay the levy.
- The rate of levy tax in Ireland was based on the market value of the land. Vacant land with lower land values was the least likely to be developed and therefore remained on the register for a prolonged period of time – paying low levies and defeating the intent of improving the amenities of the area. Calls have been made for the Government to be able to force a sale, take ownership of the land or rezone the land for a purpose that is feasible and contributes to the amenity of the area (Irish Government, 2020).
- Ernst and Young (2020) found the vacant site levy can be considered punitive to those who are genuinely seeking to develop the land. There are instances where developers are actively

progressing the development of vacant land through purchase, feasibility, design, planning permissions and the procurement of services and infrastructure.

4.5. Co-working

According to Halvtigala, Antoniades and Eves (2019) co-working, which provides independent workspaces in shared office environments to members of diverse organisations and individuals, is a rapidly emerging workplace phenomenon in today's knowledge-based economy (see also Spinuzzi, 2012; Parrino, 2013).

Co-working provides flexible spaces where members can work alone or interact with like-minded people in the short term, mainly on a pay-as-you-go basis (Bouncken and Reuschl, 2016). While workplace evolution has historically been gradual, the co-working industry has been expanding at an exponential rate over the past decade in many global property markets (Knight Frank, 2017). For example, the total flexible office space available in the Asia-Pacific region in 2018 was approximately 3.5 million square metres. This is an increase of 27% from 2017 and an increase of 56% on the 12 months prior (Boucher, 2018).

4.5.1. Property background

Co-working was initially driven by the preferences of freelancers, knowledge workers and start-up communities. More recently, the sector has targeted large corporate organisations that seek innovation and direction to expand their footprint (Halivitigala et al., 2018, 2019, 2020). Therefore, rapid growth for co-working spaces coupled with advancements in information, collaboration technologies and the globalisation of business portfolios sees an emerging need for flexible office environments. People now require more options on how, when and where to undertake their business activities (Kojo and Nenonen, 2016).

4.5.2. Co-working office space: issues and trends

Due to the high cost of establishing and maintaining traditional office spaces, traditional lease structures are usually long term with limited flexibility in lease covenants (Miller, 2014). Therefore, traditional lease structures have remained elusive for most co-working space users. This is mainly because they lack the required capital, are not credit-quality rated, and require the flexibility to expand and contract their space requirements as needed (Green, 2014). However, with the preference to lease spaces to established tenants on long leases, many landlords have been cautious in welcoming co-working operators into their buildings or incorporating co-working spaces into their office developments (Halvitigala et al., 2019).

4.5.3. Co-working space vs serviced offices

Serviced offices, which were introduced many decades ago into the commercial market, offer a different package of benefits: reception and secretarial services; phone lines, faxes and postal services; dedicated office space to the same users (i.e. the right to occupy the same space during the term of the tenancy); and short-term leases (Halvitigala et al., 2018).

However, with the changing nature of the workforce and technological improvements, many of these benefits have been superseded by advances in mobile phones, the internet and cloud-based access (Waters-Lynch and Potts, 2017). Therefore, a key consideration for landlords is how to better use existing office space while simultaneously adjusting to the changing workforce and obtaining maximum cash inflow for rentals.

4.5.4. Location of co-working office space

An emerging area of significance is regional locations. There appears to be an increasingly popular demand to position co-working centres in key regional areas (Cameron 2012; Forbes 2014). Commercial landlords may consider this as an exciting opportunity to transform difficult-to-lease commercial premises into vibrant co-working hubs. There are many benefits for users, such as eliminating the cost of setting up a home-based office and clearly separating home and work environments (Land et al., 2012). Further research suggests co-workers have started to leave their computers at co-working centres, rather than taking their work home (Kjaerulff 2010; Cameron 2012; Forbes 2014).

Therefore, these changing work patterns provide a guide for commercial landlords to rethink their tenant mix, the design of spaces and how the spaces are used. The traditional long-term lease for corporate businesses and home offices for freelancers were once the standard expectations; the past decade has witnessed a shift in what the office environment might be (Dixon and Ross 2011; Bryant 2003; Brunelle 2013; Ross and Blumenstein 2013).

4.5.5. Landlord issues

Recent research has identified the difficulties in attracting new clients to co-working hubs and the difficulty of maintaining viability through a membership fee; some landlords indirectly offer a subsidised fee structure. However, a traditional standard lease usually attracts a free rental period upfront, so an equal comparison of financial viability would be necessary. The ramifications from the COVID-19 pandemic have exposed issues with the traditional CBD office leasing structure and markets. Potential market vacancies caused by major tenants downsizing their traditional space requirements will place more focus on different office lease structures.

There are several strategies for landlords wanting to enter the emerging co-working market. These include leasing space to co-working operators, entering the market directly by developing their own co-working platforms, or partnering with co-working operators to develop co-working spaces.

The first strategy, leasing space to co-working providers, has several benefits for landlords, particularly landlords who own less desirable office properties. According to Halvitigala et al. (2019), approximately 80% of co-working spaces in Melbourne are located in fringe or decentralised areas where tenant demand is lower, and rents are cheaper. Most of these spaces are located in older, secondary-grade office buildings with floor plates that are hard to lease to corporate tenants or in converted warehouses and factories. In addition, some traditional industrial areas closer to the city have been revitalised into commercial hubs by introducing co-working spaces targeting technology and creative industries.

4.5.6. Potential office market benefits

There are suggestions that the co-working phenomenon is the new office market disrupter or the Uber of the office market. Unlike renting space in traditional offices, members of co-working spaces are not required to sign long-term leases, pay any deposits or make large capital outlays on fitouts. By simply subscribing to membership, the occupants receive the right to use the office space and associated facilities.

4.5.7. Trends and Challenges

Demand for co-working facilities is likely to continue to grow. However, there are several challenges. By leasing office spaces to co-working operators on long-term leases, landlords completely lose control over the end-users of their premises. Landlords may face issues with the operation of their assets if the lease agreement does not have sufficient provisions about the use and operation of the premises by operators and their members. Therefore, well-defined provisions are required in the head lease on issues such as landlord consent on sub-leasing, terms between the provider and the end-user, restrictions on the use of space and associated amenities, minimum space requirements per user, building operation and maintenance responsibilities, and termination rights. When introducing co-working spaces into multi-tenanted buildings, landlords need to consider and address issues such as:

- appropriate tenant mix, compatibility between different end-users
- relationships among other tenants and end-users
- clarity as to the use of building common areas
- security issues within the building.

There are concerns that co-working might have negative implications on the long-term demand for leased office premises and will reduce the demand for reactive expansion space, resulting in smaller but more stable tenant requirements (Knight Frank, 2016). Co-working spaces are also associated with higher occupation density, which could cause additional structural stress on building services that are designed for a smaller capacity. Therefore, many landlords are required to invest substantial capital on building upgrades and expansions before leasing spaces to co-working operators. However, it is difficult to conduct a rational cost-benefit analysis for such upgrades as there is no hard quantitative evidence available on the benefits of leasing space to co-working providers.

More generally, there are two main challenges confronting landlords. First, the reliance on co-working operators to perform and survive within changing market conditions in the property industry; second, transforming traditional office spaces into engaging co-working hubs. Various strategic considerations, if adopted and implemented by landlords, will ensure optimum growth for their property asset investment.

Strategic considerations include offering co-working spaces as a further amenity in mixed-use properties or offering co-working spaces to their larger existing tenants who seek adaptable spaces with flexible or shorter-term leases. This approach will encourage corporate occupiers who seek buildings with traditional leases to house their core workforce but may also require a large co-working space within the same building for the peripheral workforce. There are many opportunities for landlords to partner with co-working operators and capture a market segment of start-ups and freelancers that otherwise would not fit under their traditional leases.

While the majority of co-working space is based on small businesses operating from these facilities, there is also an increasing demand for office space for individuals. Several operators are now offering a hot-desking flexible membership form of co-working. In these situations, the individuals or teams can pay for memberships that come with an allotment of pre-paid access hours per month. These hours can be spread out based on operation hours and actual office site locations. Under this model there are no set times or location for the user. For the building owner or head lessee, the income from the office space is a membership fee and hire fee rather than a formal rent.

4.5.8. Industry insights

A major trend in the commercial office property sector has been the significant impact of COVID-19 on office vacancies, leasing uptake and effective rents. The office markets in the major CBDs in Australia are at 30-40% occupancy and the only CBD office sector recording larger lease uptakes is the Sydney CBD.

The increasing vacancy rates across all commercial office sectors have been driven by the work-from-home requirements during COVID-19 lockdowns. Industry experts interviewed confirmed that, across both public and private sectors, work from home will be an ongoing component of business operations and most office workers may not return to a full five-day working week at their employer's office. The industry view is that most workers will be in the office at approximately 60% of pre-COVID levels.

Most activity in office leasing over the past 12 months has been in the sub-leasing sector and for floor areas less than 500 square metres. This is the market targeted by co-working operators. The industry participants interviewed also stated that organisations with leases about to expire will decrease the amount of office space that they buy. This will place more pressure on vacancy rates and effective rents in the A, B, C and D grade office sectors, with the prime office sector not being affected to the same degree.

Based on these market factors, it is expected that CBD co-working office operators will be suppressed in the short to medium term.

Despite the limited potential of co-working in the major CBD office markets, industry participants consider co-working options will increase in suburban locations close to good transport facilities to cater for firms requiring smaller office accommodation close to staff who are (and expect to continue) working from home.

Although the use of CBD office space for co-working operations will decline over the short to medium term, a change of use for some of this office space is being developed. Instead of these co-working spaces being used as office operations, participants advised that there is a demand for specialist function areas in CBD locations. Pre-COVID, many larger organisations had in-house function rooms for staff and client use. The social distance spacing, cleaning and health requirements stipulated for COVID occupation now make these in-house spaces impractical and costly for many firms. These operations can be outsourced, and this service taken up by the co-working operators.

The repurposing of co-working spaces into event/function spaces is not expected to raise any GST-related concerns since both forms of supply would be seen as taxable supply.

4.6. Student accommodation

Investment in student accommodation has been rising for decades. In an increasingly competitive environment, higher education providers focus on supplying housing as a way of attracting students. Ready access to secure housing is a major consideration for international students in the selection of schools; therefore, student housing remains a critical need for higher education operators. For investors, interest is growing in student housing, given that it represents a steady flow of highly profitable investment returns and, as noted in Knight Frank (2019), it remains a promising asset.

This trend is global and is particularly prevalent in developed countries, which remain attractive destinations for international students due to high-quality education, tourist attractions and other work and living opportunities during and after study. The OECD (2019) forecasts that the globally mobile student population will increase to eight million by 2025, from five million in 2019.

With the massification of higher education, much of the astute debate around student accommodation has focused on the geographies of students; the impact of ‘studentification’, a term coined by Smith (2002, 2005), has been popularised. Described as the growth of high concentrations of students within the localities of higher education institutions, studentification is noted to have some negative outward features for traditional residential areas mainly through four dimensions: economic, social, physical and cultural (Smith, 2002; Universities UK, 2006). Positive effects of studentification have been identified as increasing the levels of spending in the local economy, improvement in opportunities for spin-off companies, and greater activity in educational, cultural and other arts events, concerts and performances, sporting events and facilities and other service sectors.

4.6.1. Accommodation types

Generally, student accommodation exists in one of two forms: university-provided accommodation or private accommodation. University-provided accommodation consists of traditional halls of residence supplied and managed by the institutions, primarily on campus. With student numbers increasing considerably in many countries and changing expectations of a Millennial generation (La Roche et al., 2010), higher education providers have become more open to private accommodation provision with the aim to support their core services in education. This has led to massive growth in private student accommodation, which is either privately rented houses of multiple occupations (HMOs) or purpose-built student accommodation (PBSA) (Smith, 2002, 2005; Smith & Holt, 2007). HMOs are shared houses where multiple students rent from private landlords, usually individuals, who have converted these properties into student accommodation. PBSA is usually off-campus accommodation provided by private investors or investment groups that have hundreds to thousands of bed spaces available for students in large-scale, modern, multi-unit complexes.

PBSAs are often developed in collaboration between universities and private investors. The former provide a guarantee of minimum occupancy and in return gain an increase in housing options for their students and hence their international appeal; while the latter secure a steady, profitable flow of return in the form of student rents and capital appreciation of landed assets. A hybrid of the two forms of accommodation exists, although it is less common. Universities partner with private entities to provide student accommodation on or off-campus. This may be in the form of a build-operate-transfer agreement where the university provides the land and the private entity(/ies) develops, manages and receives income from the property for an agreed time frame after which they hand over the property to the university. Any variant of this collaboration may exist to address the specific needs of the universities and private investors concerned.

4.6.2. Market significance

In the UK, the continuing expansion of higher education has increased involvement of private investment capital. Changing student demands are encouraging a move away from houses in multiple occupations towards purpose-built accommodation. The PBSA market has grown significantly in recent years, with a record 627,000 bed spaces in the UK as of 2018 (Cushman & Wakefield, 2018). Seventy-seven per cent (77%) of the 2018-19 bed supply was provided by the private sector, suggesting that universities are becoming increasingly reliant on it to deliver the large volume of PBSA required (Knight Frank, 2019). Given the high demand from increasing numbers of students, there remains a significant undersupply, with full-time student numbers outweighing these bed spaces by a 3:1 ratio in 2018.

International students find Australia to be an attractive destination as it provides, among other things, high standards in education and opportunities for residency. UNESCO data shows that Australia is the world's third most popular destination for education, accounting for 7% of the world's five million foreign students. Education is Australia's third-largest export industry and one of the nation's most dynamic (DFAT, 2019). As JLL (2019) notes, the increase in international student enrolments in higher education has continued, growing by 14.3% in 2018 and cumulatively by 73% in the five-year period before 2019. With this huge demand, PBSA investment has grown significantly, with the number of PBSA beds expected to exceed 100,000 by December 2022 across Australia's six largest university markets. Most of the recent supply has been developed and operated by private developers and is typically non-catered accommodation. Private student accommodation now accounts for the majority of student housing stock (approximately 59%).

4.6.3. Trends and challenges

Education is one of Australia's largest exports. Prior to the COVID-19 pandemic, the maturing of overseas markets did not seem to dampen future expectations of its economic importance. Observations include:

- Private investment was expected to grow (Kelly, 2020f).
  - Specifically, foreign investment was also expected to continue to increase. Notably, cross-border capital into student property markets around the world accounted for 40% of investment in student accommodation from 2016 to 2018[34].
- A need for universities to increase collaboration with private investors to supply purpose-built student accommodation that meets student tastes and preferences[35].

Some notable dampeners were also acknowledged:

- Construction costs are high and are a major determinant of investment return and affordability.

[34] https://www.knightfrank.com/research/article/2019-07-05-global-investment-into-purposebuilt-student-accommodation-hits-new-high. Accessed 18 March 2021.
[35] As reported in Knight Frank (2019).

- Students are demanding a higher-quality product with some establishments moving into the luxury market.

For regulators, several trends require attention. The expected increase in private investment into PBSA will turn this subsector into a mainstream investment asset. This is likely to lead to higher rents since investors are only concerned with increasing income. Further, as seen in other countries such as Canada, developers may begin to sell PBSA as investment units to individual or corporate investors, which is more profitable than building and renting directly to students (Revington & August, 2020).

The classification of PBSA as a residential or commercial asset, along with its tax implications, will therefore need to be clear as the ownership model evolves. Additionally, funding for private PBSA can be problematic given that it is a relatively new niche market with which banks and other financiers are unfamiliar. Tax policy efforts can be directed towards this to influence the growth of the subsector. Finally, if foreign investment into PBSA increases in Australia as expected (Kelly, 2020f), there will be a nexus between the growth of the PBSA subsector and foreign investment; as such, policy efforts to regulate foreign investment will affect growth.

From a tax perspective, the trends outlined in this section do not appear to present any new challenges to compliance or administration.

4.6.4. Industry insights

The interview data revealed the devastating impact that the COVID-19 pandemic has had on the student accommodation sector. The pre-COVID growth that was expected (as highlighted above) has not materialised. Conversely, the sector has suffered a significant decline. The strict closure of Australia's international borders to foreign students, who constituted the target market of student accommodation, has led to what interview participants have described as the sector being "dead in the water". They intimated that the uncertainty surrounding opening of the borders further exacerbated this decline as international students consider other alternatives to studying in Australia.

Another key factor that contributed to the decline of the sector, participants suggested, was the difficulty in repurposing PSBA. Given that PSBA is a unique product that is not easily repurposed into other uses, a decline in student demand leaves the property vacant and unusable. As a result, owners have been forced to lower rents or offer rent deferrals/holidays to avoid huge vacancy rates during the pandemic.

In terms of what to expect in the future, interview participants suggested that with the reopening of the international borders and the subsequent return of international students, demand may be restored to pre-COVID levels and the predicted growth will occur. This growth, participants intimated, would depend on foreign investment. They said that the rate of restoration would be inextricably linked to the speed at which the borders reopened and the retention of international student interest in Australia as a study location.

5. Supply-side Influences

There are several supply-side factors that can influence the overall level of activity and behaviour in the property and construction industry. In this section, we briefly discuss three: wholesale finance markets, foreign investment laws and natural disasters.

5.1. Financial markets

Established in 1974 in the aftermath of serious disturbances in international currency and banking markets, the Basel Committee's main goal is to enhance financial stability by improving the quality of banking supervision worldwide and establishing standards that aim to increase the quality and quantity of capital banks must hold. The Committee has established a series of international standards for bank regulation. Most notable are the Committee's landmark publications of the accords focused on capital adequacy, which are commonly known as Basel I, Basel II and, most recently in response to the 2007–09 financial crises, Basel III[36].

In Australia, the Australian Prudential Regulation Authority (APRA) has aligned its regulations for Australian banking institutions with the capital requirements detailed in Basel III. The standards, which require authorised deposit-taking institutions (ADIs) to maintain higher leverage (3% minimum),[37] help to protect and stabilise the financial system. In turn, the tighter regulations and capital requirements make it even more challenging to secure commercial mortgage lending through ADIs.

While APRA has published its view on the impact of the Basel III reforms in Australia[38], academic research on this effect is rather scarce and is mainly in the area of bank profitability. Le et al. (2020), for example, explore whether the capital requirements under Basel III are effective in enhancing the profitability and efficiency of the banking sector in Australia. Le et al. (2020) find that the stricter capital ratio applied under Basel III increases operating earnings but fails to improve bank efficiency.

Naturally, the tighter capital requirements are expected to create more opportunities in the market for fintech, non-commercial banks such as Ubank, loans.com.au, homeloans.com.au, Athena, etc., and even peer-to-peer lending platforms such as Plenti and Society One, which mainly offer personal loans but might offer mortgage products in the near future.

Considering the tighter capital requirements for banks, and expedited by COVID, we believe partnerships formed by fintech companies and lenders will also grow in the coming years along with blockchain-based technologies for tracking and managing transactions and loan payments,

[36] See Bank of International Transfers review available at: https://www.bis.org/bcbs/history.htm. Accessed 18 March 2021.
[37] See APRA, 'Leverage ratio requirement for authorised deposit-taking institutions', 14 February 2018. Available at: www.apra.gov.au/sites/default/files/Leverage%2520ratio%2520requirement%2520for%2520ADIs_0_0.pdf.
[38] More on the impact of the Basel III reforms in Australia is available in APRA's publication, 'Implementing Basel III capital reforms in Australia', https://www.apra.gov.au/sites/default/files/September-2012-Basel-III-capital-regulation-impact-statement.pdf.

approval of loans, better risk management of loans, and an improved credit score system. In short, we expect non-banks and innovative banking products to grow considerably in the coming years.

5.2. Regulation of foreign investment

As discussed previously, foreign investment is a major funding source for development activity. Changes in regulations can significantly influence the level of activity. There have been two significant recent changes.[39]

March 2020

- Proposed foreign investments into Australia subject to the *Foreign Acquisitions and Takeovers Act 1975* (the Act) will require approval, regardless of value or the nature of the foreign investor.
- Temporary changes can be achieved by a zero monetary screening threshold for all foreign investments.

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- Seek approval for all investments in sensitive national security land or businesses (including starting such a business), regardless of value.
- Be subject to enhanced monitoring and investigation powers, as well as stronger and more flexible enforcement options and penalties.
- Continue to bear the costs of administering the foreign investment regime, under a reformed fee framework that will be fairer and simpler for foreign investors.

These changes may affect foreign investment in the property and construction industry in two ways: first, specific activity related to "sensitive national security land" and, second, a macro dampener arising from the "enhanced monitoring…". Overall, we believe these influences will be minor but important to keep in mind.

Specific to residential land, the following is extracted from the Foreign Investment Review Board's Guidance note 6, Residential Land.[40]

- Foreign persons generally require foreign investment approval before acquiring an interest in residential land, regardless of its value.
- The Government's policy is to channel foreign investment into new dwellings, as opposed to established dwellings, as this creates additional jobs in the construction industry and helps support economic growth. It can also increase government revenues, in the form of stamp duties and other taxes, and from the overall higher economic growth that flows from additional investment. Foreign investment applications are therefore generally considered in light of the

[39] https://firb.gov.au/qa-temporary-changes-foreign-investment-framework and https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/major-reforms-australias-foreign-investment-0. Accessed 18 March 2021.
[40] https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/G06Residentialland_0.pdf. Accessed 18 March 2021.

overarching principle that the proposed investment should increase Australia's housing stock.
- Approval for an acquisition of vacant land for residential development will generally be conditional on the construction being completed within four years and the land not being sold until the construction is complete.
- Approval for an acquisition of a new (or near-new) dwelling is not usually subject to any conditions concerning its usage.
  - Property developers looking to sell their newly developed dwellings to foreign persons can also apply for foreign investment approval on behalf of their foreign customers. Where a developer holds such an approval, the foreign person will generally not need to seek their own foreign investment approval.
- Non-resident foreign persons are generally prohibited from purchasing established dwellings. However:
  - temporary residents can apply to purchase one established dwelling to use as their place of residence while they live in Australia.
  - all foreign persons can apply to purchase an established dwelling for redevelopment if the redevelopment will genuinely increase Australia's housing stock.
  - foreign-controlled companies can apply, in limited circumstances, to purchase an established dwelling to house their Australian-based staff.
- All acquisitions (and sales) of residential land by foreign persons must be notified to the Register of Foreign Ownership of Residential Land.
- Foreign persons who own residential property will be required to pay an annual vacancy fee if their property is not residentially occupied or genuinely available for rent for more than 183 days (approximately six months) during a year.
- Approval for an acquisition of residential land to be used for a non-residential purpose (e.g. redevelopment for commercial use) will generally be subject to development conditions, as assessed on a case-by-case basis.
- Foreign persons must keep records relating to certain actions concerning their foreign investment for up to five years.

These criteria show that foreign investment is tightly regulated; we believe this will continue in the foreseeable future. Therefore, we suggest that foreign investors will still facilitate a large proportion of development activity going forward, albeit being more reticent in the current foreign investment climate. In the immediate future, it is likely that development activity will dampen and therefore GST revenue arising from the sector will be reduced.

5.3. Crises

Australia is a large continent spanning a variety of climatic and geographic zones. The Australian Government Disaster Assist Website[41] classifies several types of natural disasters including storms, floods, cyclones and bushfires. Disasters happen in remote, urban and metropolitan areas. Some can be relatively localised while others span large areas.

[41] https://www.disasterassist.gov.au/find-a-disaster/australian-disasters. Accessed 18 March 2021.

The impact of disasters can have a major influence on construction activity. Even when localised, they can draw resources away from planned or prospective development activity. Noting that some disasters can have a devastating impact on property, an important dimension of construction is how it services the rebuilding phases peculiar to each event.

Therefore, having an understanding of previous built form, current trends (in built form) and how they might apply to local characteristics will inevitably shape the type of construction activity and therefore the level and sources of (GST) revenue.

5.3.1. COVID-19 case study

COVID-19 has and will continue to affect local, national and global economic activity. Table 1 provides some insight into how business activities might have changed. Importantly, these changes will affect property construction firms in different ways. Ultimately, the extent a firm changes the way it conducts its activities will be determined by several factors such as the level of employee autonomy, types and sources of inputs, and the degree of specialisation and skill required to generate outputs.

Table 1: COVID – changing the way business activity is conducted.

Aspect	Change
Culture	Increase in the acceptability and effectiveness of remote working.
Political	Decrease in travel across state and international borders. Foreign trade, partly as a result of foreign production, has lessened.
Legal	Foreign investment has become increasingly restricted.
Regulatory	Worksites operate at less than 100% capacity.
Financial	Interest rates have decreased, and credit ratings have increased. Heavy government borrowing possibility crowding out private investment.
Technological	Increased use and acceptance of technology including contactless payment options.
Economic	Governments worldwide have embarked on major infrastructure projects with the view to stimulating economic activity and addressing market uncertainty.
Environmental	Internal migration to regional areas has increased, which may put a strain on local environments.
Developmental	Companies, due to (the risk of) closed borders, may be more likely to focus on local projects.
Social	Sectors such as in-home healthcare are likely to grow as a desire to age-in-place intensifies. The level and composition of changes in immigration are difficult to gauge at the moment based on current data; however, some decrease does appear to have occurred.

Source: Adapted from Chapman, R. J. (2019).

The overall extent to which GST revenue is affected by these changes is difficult to gauge. However, it is likely, on balance, that activity will decrease industry wide. Here are some examples of potential changes.

Cultural

Working offsite may be embraced by some businesses more than others, i.e., architectural firms may be more likely to use remote working arrangements than those providing landscaping services. Drawing on a recent survey, the Victorian Chamber of Commerce and Industry Chief Executive commented:

> *"I doubt we will return to the pre-COVID-19 environment of working five days a week in the office. The most likely scenario for most office workplaces will be a blended model involving some work from home and some work from the office, for 2021 and beyond."*[42]

In the same news release, other results from the survey were revealed, including that 27% of workers wanted to remain at home for up to two days a week. In contrast, only one-third (approximately) selected to work onsite for five days.

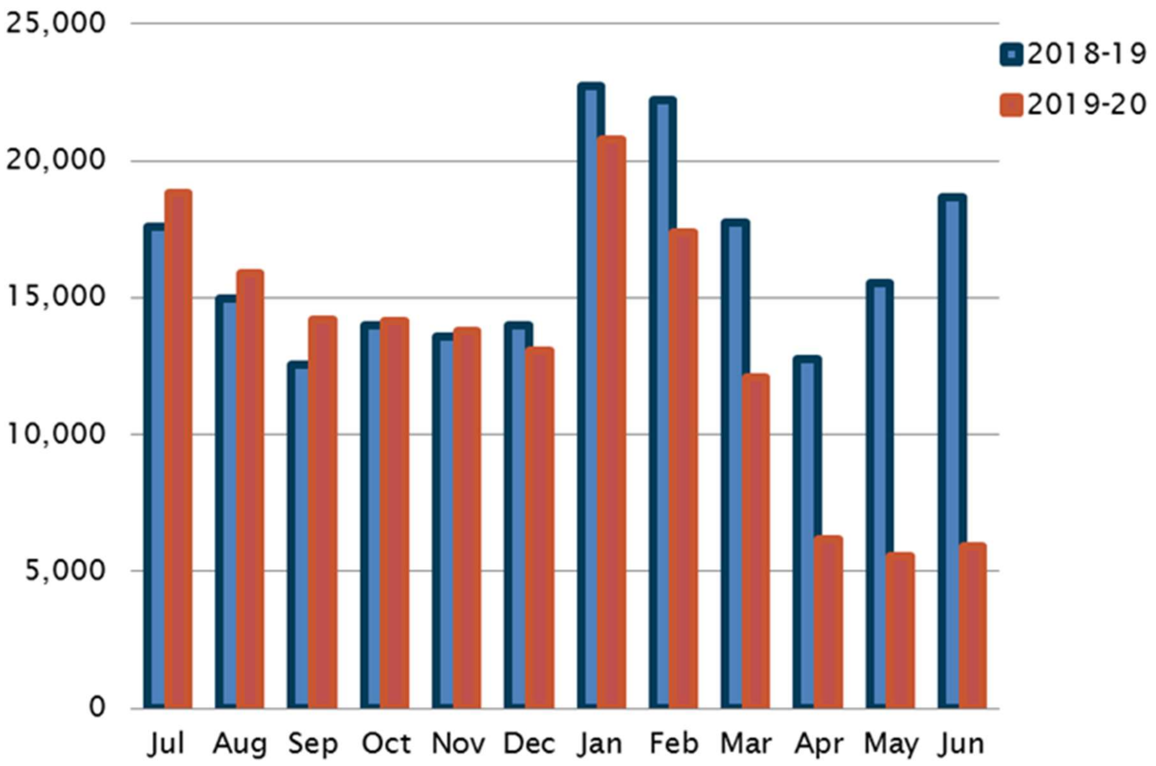
If the acceptability of remote working remains post-COVID, the demand in office markets could significantly fall. The extent that this affects the construction of new buildings and retrofitting of existing buildings is unclear. The effects are likely to be different across commercial building grades and localities. It is likely that lower (higher) graded buildings will become less (more) desirable if excess supply is observed. GST revenue, overall, will likely decrease from this effect, resulting from a decrease in demand.

Political

International travel is restricted, reducing activity in the hospitality and higher education sector. The extent to which this causes enterprises to revise their exposure to student accommodation, as well as hospitality construction projects, is not yet understood. Further, in the higher education sector it is conceivable that COVID has altered the operating model permanently, with Australian institutions possibly becoming less dependent on educating large volumes of international students face-to-face. If this occurs, it will have a direct impact on both student accommodation and hospitality construction markets more generally. Figure 7 shows a significant decrease in international student visas following the initial wave of COVID.

[42] https://www.victorianchamber.com.au/news-media/all/2021/01/flexible-working-survey. Accessed 10 March 2021.

Figure 7. Primary visa grants by month, higher education and postgraduate research sectors, 2018-19 and 2019-20.



Source: Parliament of Australia.[43]

Australia sources its highest number of international students from China and India.[44] Diplomatic relations with these countries can deteriorate from time to time, affecting one of Australia's largest export services.[45] Further, it is worth noting that the quality of higher education providers in China is improving[46] and that online education[47] is seen as an important mode of service for the Indian market. These factors suggest that demand from these two dominate markets may soften, which in turn could reduce activity in the higher education development sector as well as industries directly linked to servicing the international student market.

Legal

Foreign investment regulation was briefly discussed earlier. A noticeable shift to more closely regulated foreign operations and ownership is likely to continue. The extent that foreign ownership regulation occurs will directly influence activity in the sector.

It is also difficult to gauge the extent to which foreign firms are willing to embrace more risk – noting that the Australian economy, in recent times, has been subjected to increased uncertainty, albeit

[43] The impact of COVID-19 on Australian higher education and overseas students – what do the numbers say? https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/August/Universities_and_COVID. Accessed 3 March 2021.
[44] https://internationaleducation.gov.au/research/datavisualisations/Pages/Student-number.aspx; 2020 data. Accessed 28 April 2021.
[45] https://www.smh.com.au/politics/federal/chinese-students-will-not-go-there-beijing-education-agents-warn-australia-20200610-p55151.html. Accessed 28 April 2021.
[46] https://www.timeshighereducation.com/student/best-universities/best-universities-china. Accessed 28 April 2021.
[47] Chapter 3 – summary section https://www.dfat.gov.au/geo/india/ies/chapter-3.html. Accessed 28 April 2021.

relatively less than some of the world's leading economies. As foreign entities are likely to take a more cautious approach and possibly reduce activity levels, GST revenue could fall, at least in the short run.

Regulatory

Worksite restrictions such as those advocated by NSW Worksafe[48]:

- implementing controls to reduce direct contact with workers and customers, including:
    - physical distancing of at least 1.5 metres where reasonably practicable
    - barriers and/or modifying workplace layouts to create adequate space at counters, between workstations, seated areas etc.
    - modify shifts, hours and rosters to reduce peak periods. For example, stagger start and finish times, days of the week from home/office.
    - actively support flexible work arrangements, including working from home or other locations.

Such restrictions may impede the productivity of manual work tasks critical to the construction industry, potentially leading to significant delays[49]. In the short run, the probable effects of such restrictions are a decrease in the volume of activity.

Financial

While interest rates around the world are low, it is apparent that credit ratings are being revised and offsetting this decrease in the cost of borrowing. This, combined with major government-initiated infrastructure projects, suggests that resources for non-government enterprises may be harder to find in the immediate future, leading to a dampening in private-sector activity. An exception to this could be localities adjacent to major government infrastructure, where activity may intensify[50]. Overall GST revenue is likely to fall in the short to medium term. Table 2 shows some examples of government projects, i.e. rail, roads and tunnel, where activity might grow faster.

[48] https://www.safework.nsw.gov.au/resource-library/COVID-19-Coronavirus#:~:text=physical%20distancing%20of%20at%20least,rosters%20to%20reduce%20peak%20periods. Accessed 28 April 2021.
[49] https://www.smh.com.au/business/the-economy/legal-minefield-builders-fear-wave-of-post-covid-litigation-20210316-p57b3c.html. Accessed 28 April 2020.
[50] https://www.highincomeproperty.com.au/long-term-property-investment/. Accessed 3 March 2021.

Table 2: Selected public infrastructure activities.

Initiative	Problem description
Regional and rural WA road network safety improvements	Regional and rural WA road network safety improvements
Cycling access to Melbourne CBD	Cycling access to Melbourne CBD
Frankston public transport connectivity – Victoria	Public transport connectivity to Frankston
Queensland inland road network upgrade	Improvements for national, state and local roads located in inland Queensland
Great Northern Highway improvements Broome to Kununurra – WA	Road connectivity between Broome and Kununurra
South Coast Highway improvements Albany to Esperance	Road connectivity between Albany and Esperance
Shoalhaven River crossing capacity (now Nowra Bridge)	Graduated from a Priority Initiative to a Priority Project in August 2019
Broadbeach – Burleigh Heads public transport connectivity (now Gold Coast Light Rail Stage 3A)	Graduated from Priority Initiative to a Priority Project in August 2019
Western Harbour Tunnel and Beaches Link – NSW	Changed problem time frame from long term to medium term

Source: Infrastructure Australia.[51]

Technology

The necessity to embrace technology has driven an increase in its use and development. The extent to which this may result in permanent moves to more online/digital transactions is unknown. EFTPOS Australia believes that customers prefer contactless payment options over other payment methods. It has witnessed a 400% growth year-on-year to July 2020[52]. The extent to which small operators use online payment systems in preference to cash-based transactions could significantly determine future GST revenue. Unfortunately, it is not possible to conclude whether this may increase activity in the shadow economy.

Economic

Governments have moved to stimulate economic activity. However, uncertainty dominates the short-term horizon. The extent to which unemployment will be affected in the medium to long term by the pandemic is still unclear. Any significant downturn in employment could lead to an increase in the cash economy, especially among smaller operators, which may affect GST revenue.

Environmental

Data from the Australian Bureau of Statistics (Figure 8) shows the net internal population migration from the greater capital cities combined. The extent to which this affects regional communities and their capacity to service increasing numbers while maintaining the quality of local environments is

[51] Infrastructure Australia, https://www.infrastructureaustralia.gov.au/sites/default/files/2020-02/2020%20Infrastructure%20Priority%20List%20HI%20resolution.pdf. Accessed 3 March 2021.
[52] Source: https://www.eftposaustralia.com.au/2020/08/28/eftpos-cardholders-embrace-mobile-payments-with-400-growth/. Accessed 3 March 2021.

unknown. It is conceivable that there will be a need to increase non-residential property construction projects in regional areas in the medium term as shortfalls in infrastructure emerge. This could conceivably increase the cost of construction.

Figure 8. Movement from the cities.

Source: Australian Bureau of Statistics, Quarterly net internal migration, greater capital cities combined [53].

Developmental

The uncertainty around state and international border closures could conceivably influence the level of activity in the states and territories where businesses do not have an ongoing presence (i.e., an absence of a satellite office in one state may deter a company from conducting business in that state). Generally, decreases in confidence are viewed as having a dampening effect on private sector activity and therefore GST revenue.

Social

The desire to age-in-place[54] is likely to gather intensity. This means that retirement villages and the aged care sector more generally will likely incur a structural shift in the services they provide and how they provide them. This has the potential to significantly change the business activity type, with

[53] Australian Bureau of Statistics, https://www.abs.gov.au/statistics/people/population/regional-internal-migration-estimates-provisional/sep-2020#capital-city-migration. Accessed 3 March 2021.
[54] We define age-in-place as the desire to age in their own home or a suitable house in their local area while maintaining a high degree of independence. Such arrangements are supplemented by care services, e.g., cleaning.

retirement homes more likely to focus on providing high-level care. The extent to which this might impact GST revenue will be reflected by the decrease in construction of lower-care facilities offset by an increase in higher-care facilities.

Immigration is another aspect of social change and will have differing effects across localities. This means the effect on construction will vary. Table 3 shows where immigrants intend to reside, and Table 4 shows a sharp dip in the migration forecast for 2020-21 and 2021-22.

Table 3. Migrants' intended residential destination.

State	Places where immigrants intend to reside
New South Wales	44,182
Victoria	34,189
Queensland	18,743
South Australia	11,966
Western Australia	11,377
Tasmania	6,152
Australian Capital Territory	4,370
Northern Territory	255
Not specified	6,799

Source: Department of Home Affairs, 'Places where immigrants intend to reside – 2019-20 Migration Report'.[55]

Table 4: Migration forecasts, 2018-19 to 2023-24.

	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Net overseas migration, Australia	239,700	154,100	–71,600	–21,600	95,900	201,100

Source: Budget Review 2020-21 Index, 'Immigration: Net Overseas Migration'.[56]

[55] Department of Home Affairs, https://www.homeaffairs.gov.au/research-and-stats/files/report-migration-program-2019-20.pdf. Accessed 3 March 2021.
[56] Budget Review 2020-21 Index, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview202021/Immigration. Accessed 3 March 2021.

6. Future Implications

In this section, we draw primarily on the interviews with industry experts to investigate trends in the commercial, retail, residential and industrial property sectors in the short to medium term. We also make some general observation from the interviews about tax and business structuring. This section concludes with some suggestions for future research.

6.1. Commercial property

Industry experts argued that in broad terms the commercial property sector in recent times has been experiencing demand issues, with moderate vacancy levels in most major capital cities across Australia. The 2020 pandemic, however, has had a significant impact on this part of the property market. As a consequence of lockdowns, many organisations had to adapt to their employees working from home. Although restrictions eased, new habits had been formed by these employees and work from home has become a genuine part of hybrid working models being adopted by most organisations.

Consequently, demand for office spaces in CBD areas has all but collapsed. One participant mentioned that very few new contracts had been signed for large office space offerings (30,000 square metres and larger). There is clearly caution in the market, with many organisations looking to downsize their office space requirements and continuing to encourage and support work from home for their employees. There was consensus among the experts we interviewed that the commercial property sector, especially office buildings are going to be in decline for some time.

This situation is likely to prompt landlords to look for options to convert their properties into mixed-use assets. Several participants held the view that office buildings may be repurposed at least in part to include event/function venues and perhaps retail/entertainment/hotel offerings. From a tax perspective, this may in some cases have GST consequences, especially if part of the property is repurposed for residential use. The supply may be different, from taxable supply for pure commercial premises to input-taxed supply for residential. We are not able to predict whether repurposing of commercial office buildings will happen on a large scale, but this is an area where there is likely to be some activity that may result in changes to taxation outcomes.

The effect of the downturn in commercial office buildings may not affect all tiers of this sector equally. As one participant suggested, the prime office building sector may be relatively unaffected, with other (lower) grade buildings bearing the brunt of the downturn in demand. Our interviewees also suggested that bargaining power has already shifted to tenants in this market and that the head lessee or landlord may have to bear greater risks in order to attract tenants. This is unlikely to have tax implications; rather, there is likely to be greater flexibility for tenants and less stability for the landlords. There may also be an increase in sub-leasing activity as existing tenants look to offload unused office space; this will have a direct impact on the co-working office property sector.

Revival of commercial office buildings in CBDs across the country may be reliant on large multinational companies or large government departments taking up the excess supply. Some of our participants argued that perhaps incentives and/or tax breaks could be provided to stimulate this subsector of the market, especially in relation to attracting large corporates.

In summary, the outlook for commercial office buildings is not optimistic, at least in the short to medium term. Tax implications may arise where landlords decide to repurpose existing commercial assets into multi-use commercial and non-commercial/residential assets, and this may occur in the short to medium term.

6.2. Retail property

Much like commercial property, retail has experienced a decline that has been exacerbated by the pandemic. The rise of online shopping and the continued strong demand for this service has meant that the immediate future of retail property assets is not optimistic. There was consensus among the experts we interviewed that the retail property sector was experiencing a downturn that is likely to be positively correlated with the rise of online shopping.

Landlords in this subsector may also look to alter the mix of offerings in their retail property portfolio. For instance, some interviewees mentioned that retail shopping centres may be more focused on being entertainment precincts more broadly, as opposed to just shopping centres. This may result in offerings such as cinemas, gaming facilities, restaurants and similar that allow people to socialise. COVID’s impact has also caused a decline in turnover rents in the major shopping centres.

Bargaining power, much like commercial office spaces, has begun shifting in favour of tenants. While this is an interesting trend, there are unlikely to be any significant implications for GST collection. At a macro level, the downturn in the retail property market has been offset by the rise in demand for industrial construction and property. This is discussed next.

6.3. Industrial property

The rise of online shopping has had a major effect on supply chains across the globe and the uptake of online shopping in Australia has been significant. The pandemic forced even those who may have been hesitant to shop online to do so, further driving up demand and retail sales. There was consensus among our experts that the industrial construction sector was booming and would continue do so over the short to medium term.

The rise of online shopping has created greater demand for warehousing spaces and distribution network infrastructure. One of our participants mentioned that Australia's warehouse facilities were relatively basic compared with their counterparts in the US and Europe and predicted there would be significant investment in advanced technologies associated with warehousing and distribution networks in coming years.

Several experts also commented that prime institutional-grade industrial property was achieving yields that were lower than prime office and retail property. Pre-COVID, industrial property assets were considered higher risk compared with office and retail property.

Our participants also drew attention to the fact that the Federal Government has recently committed to investing heavily in advanced manufacturing onshore to reduce risks associated with overseas supply. These initiatives are likely to increase the demand for industrial construction over the coming years.

While there has been this shift in demand from commercial/retail to industrial, questions remain over whether there is sufficient transferability of skills in the construction industry to cope with this trend. It is likely that there will be some level of upskilling required to adapt to the changes described in this section.

From the ATO's perspective, this sector may need specific attention given the significant growth that is likely to occur over the coming years. There are no specific concerns in terms of GST, but any concerns that apply to the construction sector more broadly may apply here as well. The main point here is that there is likely to be significant activity in industrial construction and that this may require attention from the ATO.

6.4. Residential property

This subsector of the property market is perhaps the most political and sensitive issue discussed. The observations of our experts can be separated into those that apply to high-density living, such as apartments and units, and those that apply to detached housing. The trends in these two areas have been significantly different over the past few years and, like most other subsectors, the pandemic has brought these issues into sharp focus.

In general, our experts were of the view that there was an oversupply of apartments in most capital cities and that the demand for detached dwellings has accelerated, especially following state and federal government incentives/subsidies. The pandemic has all but cut off migration into Australia and this has had a significant impact on the apartment market. Add to this the lack of international students (who typically rent CBD apartments or apartments near their university campus), and the demand for apartments has fallen, as have rental prices. The yields from apartments are likely to be very low and these are no longer as attractive to ‘mum and dad’ investors as they were in pre-pandemic times.

Changes to depreciation deduction rules made recently (for property purchases on or after 9 May 2017) have also had an impact on the sales of existing investment properties. This may have had an exacerbated effect in the apartment market, given the fall in rental prices. As new apartment dwellings are in oversupply, one participant mentioned that where developers were unable to sell units, they would hold on to them. However, this could have an impact on any subsequent owners of the property, who may not be able to claim depreciation deductions for fixtures and fittings, and also reduces the time period for which capital works deductions can be claimed.

From a GST perspective, if developers are holding on to certain units due to lack of demand, their GST input credits will need to be apportioned to account for the unit that is not sold. The current state of monetary policy and low-interest rates are likely to provide a buffer to landlords. From a taxation perspective, the apartment trends do not necessarily present any new challenges, but there may be GST consequences as mentioned above.

The situation in relation to new detached housing is in stark contrast to the apartments situation. State and federal government incentives and home builder schemes have driven up demand and prices for new detached dwellings. Coupled with very low interest rates, this segment of the market has been soaring during the pandemic and continues to do so. Most of our experts agreed that this trend has reduced housing affordability as property prices continue to rise disproportionately to wages.

One participant described how there had been a rush for “whatever land you can secure” as a result of recent government incentives. This rush for land has resulted in demand for land in regional areas in addition to land in the outer fringes of capital cities. In the case of Victoria, this has driven up demand for land in places such as Geelong, Ballarat and Bendigo, among other regional centres. The work-from-home trend alluded to earlier is also contributing to this move from major cities to regional areas. Some of our participants did raise the important issue of whether these regional areas had the infrastructure capacity and capability to service this increasing population.

In relation to the demand for land, one of our participants mentioned that while in the past there were some foreign developers in the market, they are now not as prominent. This has been primarily because these foreign developers (this participant mentioned an example with Chinese and Malaysian developers) have not been able to raise the funds necessary to proceed with their projects and in most cases have on-sold the land to local developers. The fall in foreign ownership of real property in Australia has been an ongoing trend and can be linked to changes made for foreign investment and ownership by the Federal Government through the Foreign Investment Review

Board. From a taxation perspective, the lack of foreign developers in the market may reduce the complexities of administration and compliance work.

There are also changes that may eventuate over time from the differing approaches to property that Millennials and subsequent generations may have to adopt. Decreasing housing affordability for these generations may mean that many of them opt to (or may have no choice but to) rent for life rather than own a home. This may have consequences for demand in the build-to-rent sector, as the younger generation seeks stability of rental tenure and auxiliary services associated with build-to-rent properties.

In terms of taxation concerns, the trends outlined for residential property do not appear to pose any new challenges. It may be the case that compliance work may need to focus on ensuring that developers, contractors and subcontractors in the construction industry continue to account for GST accurately as the volume of their work rises in the near future.

6.5. General observations

6.5.1. Tax and structuring issues

Most of the experts we interviewed argued that profitability and business considerations along with tax considerations drive decisions in the property and construction industry, but those tax considerations (especially around GST) do not feature prominently. Some participants did say that once a development or project had been deemed feasible, then tax planning was undertaken to ensure that legitimately favourable tax outcomes could be achieved.

By contrast, stamp duty and land tax were consistently cited by our experts as the key tax concerns. We note that this effect varies between jurisdictions, although this observation about the importance of state versus federal taxes is an important distinction that does affect the feasibility of projects for developers.

The other major consideration for developers was risk management, particularly in relation to builder insurance. This was cited as the primary reason for structures where new developments would be undertaken in a separate (possibly subsidiary) corporate legal entity. The participants also argued that trusts were not commonly used by large developers since they did not afford limited liability for the reasons outlined above.

At the smaller end of the market, particularly in family groups, the use of trusts is relatively commonplace. From a tax compliance viewpoint, this does not raise any new challenges. It is important to note that there may be greater opacity among smaller developers, who may be making greater use of trusts than the large end of the market. Conversely, the tax planning resources available to the larger players are greater than what the smaller players can access.

6.6. Areas for future research

Importantly, we have identified two avenues of potential future work that we did not cover in this report but believe would be of interest to the ATO. First, while the report focuses on GST issues and emerging trends in the property and construction industry, we do not discuss the implications of business structures and other complex arrangements involving the use of trusts in order to avoid or evade tax. Trusts can present a convenient way to distribute income and complex structures can potentially be used to gain a tax advantage. In addition, the construction industry has the third-highest number of trusts of all industries in Australia[26]. We believe that a further investigation of business structures for the use of tax avoidance in the construction industry is therefore warranted.

The second avenue of research is the black economy in the property and construction industry. The industry often includes contractors who fail to lodge returns or activity statements, fail to register for GST, use false ABNs or fail to report all of their income to the ATO. We realise that the ATO's Black Economy Taskforce is the designated body tackling this issue. However, we believe that our thorough academic literature review of international and Australian publications and interviews of leaders in the industry (as academics, and not as the ATO) can contribute to a better understanding of both the scope and mechanisms of the black economy in this context.

All experts agreed that the build-to-rent and community living/land lease residential property sectors will drive the market in the short, medium and long terms. These residential housing options are more developed in the US, UK and Europe. Further research will be required to understand how these sectors have developed and are operated overseas and the possible ownership and taxation issues that could affect the Australian equivalents as the subsectors grow with public demand. Specific research will need to focus on operating models, ownership structures, affordability and the impact of legislation and governance.

Following the Royal Commission into Aged Care and initiatives associated with the concept of ageing at home, there will be a need for further research on the retrofitting of existing properties to accommodate a desire to stay independent for longer, which is being facilitated by NDIS and government provision of Home Care Packages.

Another important area of future research from a tax perspective will be the creation of a higher quality new supply of accommodation that facilitates independent living in established areas for retirees with physical and cognitive impairments, the development of specialist disability accommodation and the impact on ownership and operation structures.

Issues associated with potential border closures, the return of international students and the long-term impact of COVID will have ramifications for the student accommodation subsector in the short and medium terms. Future research areas include the repurposing of underutilised student accommodation and the future demand and quality of accommodation and facilities provided in student accommodation.

7. Conclusion

The property and construction industry is diverse and inextricably linked to broader economic outcomes in Australia. There are a multitude of stakeholders and their actions at various points in the value chain have taxation consequences.

Our review of the academic and other literature on taxation issues (particularly GST) focusing on the property and construction industry revealed little research in this area. This may be due to difficulties in obtaining data on activities and how this relates to tax planning. Our brief analysis of areas of concern for other jurisdictions – the UK and New Zealand – illustrated that despite structural differences, there were some commonalities.

For instance, HMRC in the UK was concerned with ensuring that contractors were charging and collecting the right amounts of VAT. In New Zealand, we were unable to identify any GST issues specific to the property and construction industry, although there have been some recent changes that sought to bring certain transactions into the purview of its capital gains tax. New Zealand is also proposing to scrap the ability for property investors to negatively gear their properties and this will no doubt be observed with interest in Australia.

The general trends in the industry presented in this report relate to: co-living; build-to-rent; retirement living and aged care; land banking; co-working; and student accommodation. Build-to-rent and retirement living/aged care are likely to grow significantly over coming years. Conversely, commercial construction and student accommodation are likely to experience significant downturns. These trends will have an impact on GST collections, but also have potential implications for tax compliance and administration. We suggest that as demand picks up in areas such as build-to-rent and retirement living/aged care, the ATO may need to focus its efforts on ensuring that taxpayers continue to engage with the tax system appropriately.

The impact of the COVID-19 pandemic on the industry has brought into sharp focus the systemic problems that were already there. In particular, the pandemic has had a big impact on commercial office spaces across major CBDs and reduced demand for apartments, which is largely driven by the fall in international students and migration. State and federal government stimulus responses to the pandemic, such as incentives, have driven up demand particularly for residential land, paradoxically lowering affordability and creating further pressures on existing infrastructure.

The findings from our report suggest that there are several sectors of the property and construction industry where taxation outcomes are not apparent; further guidance is needed. This is particularly in relation to newer forms of residential accommodation such as build-to-rent and co-living. In these cases, greater guidance from the ATO would be beneficial for taxpayers and potentially make compliance and administrative matters simpler. This may be done through various means, including public rulings.

Our findings also indicate that there are several issues that require a policy response from government. These issues relate to housing affordability and around whether GST concessions should be provided for certain forms of residential construction where this would be in the public interest. From a policy perspective, there may be merit in further examining whether build-to-rent is an area where GST concessions might aid younger generations and lower-income groups to access long-term, stable and affordable accommodation. While there have been some concessions from state governments, such issues should also be considered by the Federal Government.

Aged care and retirement living could pose significant issues as the proportion of the population over 65 years continues to increase. This is an area where new business models have already emerged; consequently, clarity around taxation of these new models needs to be reviewed urgently. One such model outlined in the report is land lease, where the resident purchases the dwelling but leases the land. Given that this is a much more affordable option, it is likely that land lease as well as other new models will emerge. The taxation system needs to keep up, making compliance easier for the taxpayer and administration easier for the ATO.

Interviews with industry experts revealed that property developers were more concerned with state-based taxes such as transfer duties and land tax, rather than GST or income taxes. This is not to suggest that there is no GST avoidance behaviour being undertaken by some taxpayers; rather, profitability and overall business feasibility are perhaps more important considerations at the project initiation stage. Tax planning comes in once a project passes this business feasibility phase. Nevertheless, there is room for the ATO to further engage with the industry to understand emerging business models and for Treasury and the Federal Government to consider industry incentives to improve housing and shelter outcomes for the public at large.

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9. Appendix A – Research requirements and related sections

The table below outlines the research requirements and their corresponding sections in the report.

Priority	Research Requirements
1	Emerging trends in the property industry both across Australia and internationally. This will include changes in business models such as changes in organisation structures or changes in product outputs, such as co-living; build-to-rent; expansion in student accommodation and changes to retirement living options.
2	What are the behaviours in the industry that are concerning regulators overseas?
3	Trends in, and attitudes towards, foreign investment in the Australian property market over the next 5 years considering changes in government policy (e.g. new FIRB rules), effect of disasters (e.g. Covid) and changes in banking both here and overseas
4	Any alignment between generational changes and property. What are we expecting to see in the industry over the generations to come and what changes are we expecting for the current generation?
5	Provide a breakdown of property ownership in Australia by business market, showing commercial and residential totals and the type of ownerships (e.g. what entities hold properties - corporate, trusts, partnerships, individuals, Self-Managed Superfunds, etc.)
6	What, if any, changes were identified in the industry during unexpected market force changes such as the Covid pandemic? What lasting impacts may remain in the market post Covid, such as a semi-permanent move to more working from home business models (thus potentially impacting thneed for office-based accommodation), changes in marketing models.
7	What, if any, changes has/will the industry see with the introduction of stimulus measures such as housing affordability measures and expansion of infrastructure?
8	In Australia, how extensively are legal tools, such as caveats used to hide ownership of property assets? What other legal tools may be used to hide ownership of property?

10. Appendix B – About the team

Professor Chris Eves

Role in project: project manager and property analysis expert.

Professor Eves is an applied property economist and Associate Dean Research and Innovation at RMIT University's School of Property, Construction and Project Management.

His areas of expertise include the investment performance of property sectors including residential, commercial and rural property and the impact of stigma on residential property values and investment performance.

He has undertaken a range of property industry projects and is recognised as a leading expert in the property sector both nationally and internationally through his numerous publications in leading property academic journals and appointment as a court referee and expert witness in property-related court matters. Industry-based research projects have been undertaken for government departments, the commercial property sector and major airport corporations.

Associate Professor Ashton de Silva

Role in project: project manager and economic analysis expert.

Associate Professor de Silva is an applied econometrician at RMIT University's School of Economics, Finance and Marketing. He specialises in the analysis of credit and financial markets, government policy, the property (including housing) sector and natural resources. Highly sought-after for his insights and perspectives on current economic and social issues, he has published papers in leading international academic journals and has written several reports for organisations such as the Australian Securities and Investment Commission and the Australian Centre of Financial Studies.

He has a strong track record of performing economic evaluation for government, industry and academic audiences. In recent years he has particularly focused on economic policy evaluation, including assessing various government policies such as the baby bonus and the migration patterns of 'creatives'. He has also provided expert econometric advice on rental supplement schemes for New Zealand's Ministry of Social Development on behalf of the Australian Urban and Research Institute.

Dr Venkat Narayanan (Senior Lecturer)

Role in project: qualitative research; assist with interpreting quantitative data; examine and apply issues relating to taxation of trusts.

Dr Narayanan teaches taxation law to postgraduate students at RMIT University. He has worked on a number of research projects including corporate sustainability and accountability; management accounting; accounting education; organisational change; corporate social responsibility; and sociological approaches to accounting and accounting education. In these research projects (including a project funded by the Australian Government Office for Learning and Teaching), Venkat has been responsible for project design, data collection, analysis and report writing. Working primarily in qualitative research methods, he has conducted more than 100 interviews with a diverse range of participants across the topics listed above. His work has been published in scholarly academic journals and he has several research projects underway, addressing qualitative and quantitative research methods.

Dr Yoni Navon (Lecturer)

Role in project: qualitative research; finance and economic analysis expert.

Dr Navon is a Lecturer in RMIT University's School of Economics, Finance and Marketing, specialising in quantitative finance and economics. He has a special interest in uncovering illegal and insider trading in financial markets through quantitative analysis. Prior to his academic career, Dr Navon managed the statistical consulting unit at the University of Haifa where he was responsible for survey and questionnaire design, data analysis, and the unit's call centre. Dr Navon advises companies and private clients (e.g. adviser to CPA Australia, private real estate companies on property development) in the areas of statistics and finance. Dr Navon is also an award-winning educator with more than a decade of teaching experience, having taught courses for Executive MBA, MBA, Master of Finance, Master of Accounting, Bachelor of Business and Bachelor of Statistics students.

Dr Rebecca Leshinsky (Senior Lecturer)

Role in project: property law and planning expert.

Dr Leshinsky is a property law and planning expert and Senior Lecturer in RMIT University's School of Property, Construction and Project Management. Dr Leshinsky is a property and land use planning barrister in practice since 1999. She joined RMIT in 2015 and prior to this taught in law and business (university) schools. Her research is inbuilt environment law and policy, with an emphasis on emerging property trends. Dr Leshinsky has published in peer-reviewed journals and books in the areas of built environment and land use planning instruments.

Ms Gráinne Ryan (Lecturer)

Role in project: construction management and construction trend expert.

Ms Ryan is an Industry Fellow and Lecturer in RMIT University's School of Property, Construction and Project Management. She spent 10 years working in construction management in Australia and internationally before joining RMIT as an Industry Fellow in 2016.

Ms Ryan's construction management experience spans Tier 1 and Tier 2 construction industry companies, working for both the head contractor and from the perspective of the subcontractor. Projects include greenfield industrial parks, high-end structural refurbishments, government stimulus packages, density apartments and technical hospital retrofits. Ms Ryan has been recognised with a national award in the UK for her best practice in site management under the Considerate Constructors Scheme.

Throughout her industry career, Ms Ryan has consistently achieved successful legal outcomes on project-related contractual claims. Her in-depth contract management knowledge ensures she can competently vet, amend, negotiate and administer contracts at project development stage while also forensically analysing project outcomes against contract requirements. This makes her instrumental in successful contract claim outcomes.

Dr Kwabena Mintah (Lecturer)

Role in project: property sector and market analysis expert.

Dr Mintah is a property and real estate economist with a specialisation in property market analysis for development, investment and valuation. He is also a valuation expert based on his industry experience and academic expertise. Dr Mintah's research interests are in property valuation, property development, uncertainties and risks in property development, real options valuation, valuing flexibility in property development, housing market analysis, foreign real estate investments and property data analysis. He has published several research and conference papers on valuation, property development and housing market analysis.

12. Appendix C – Relevant Excerpts from the Royal Commission into Aged Care

Recommendation 8: Cabinet Minister and Department of Health and Aged Care

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4. The Department of Health and Aged Care should have a focus on:
    a. aged care system renewal consistent with the recommendations of the Royal Commission
    b. stewardship of the aged care system and all of its component parts, including:
        i. guiding the aged care sector in the delivery of safe and high-quality care
        ii. building providers' capacity and where necessary managing the exit of poor performers
        iii. fostering innovation and continuous improvement

….

Recommendation 45: Improving the design of aged care accommodation The Australian Government should guide the design of the best and most appropriate residential aged care accommodation for older people by:

a. developing and publishing by 1 July 2022 a comprehensive set of National Aged Care Design Principles and Guidelines on accessible and dementia- friendly design for residential aged care, which should be:

    i. capable of application to 'small household' models of accommodation as well as to enablement and respite accommodation settings
    ii. amended from time to time as necessary to reflect contemporary best practice

b. implementing by no later than 1 July 2023 a program to promote adoption of these National Aged Care Design Principles and Guidelines in design and construction of residential aged care buildings, which should include:
    i. industry education, including sharing of best practice models
    ii. financial incentives, whether by increased accommodation supplements or capital grants or other measures or a combination of such measures, for residential aged care buildings that comply with the Guidelines
    iii. advancing to the National Federation Reform Council by 1 July 2025 a proposal for any amendments to Class 9c of the National Construction Code to reflect accessible and dementia-friendly design standards for new residential aged care buildings, or those proposed to be substantially refurbished, according to specifications informed by the National Aged Care Design Principles and Guidelines.
c. advancing to the National Federation Reform Council by 1 July 2025 a proposal for any amendments to Class 9c of the National Construction Code to reflect accessible and dementia-friendly design standards for new residential aged care buildings, or those proposed to be substantially refurbished, according to specifications informed by the National Aged Care Design Principles and Guidelines.

Recommendation 46: Capital grants for 'small household' models of accommodation

1. From 1 January 2022, the Australian Government should provide additional capital grants for building or upgrading residential aged care facilities to provide small-scale congregate living.
2. The amount of annual grant funding should be increased to $300 million in 2021–22, $600 million in 2022–23 and $1 billion in 2023–24, and should be indexed for inflation in subsequent years.
3. Priority for these capital grants should be given to approved providers whose premises have or will have a majority of aged care residents who are (within the meaning of section 7 of the Grant Principles 2014 (Cth)) in one or more of the following categories:

    a. low-means care recipients, supported residents, concessional residents or assisted residents
    b. people with special needs

c. people who live in a location where there is a demonstrated need for additional residential care services
d. people who do not live in a major city.

4. The capital grants program for building or upgrading residential aged care facilities to provide small-scale congregate living should continue after the introduction of the new Act.

Recommendation 55: The Multi-Purpose Services Program

From 1 December 2021, the Australian Government, working together with State and Territory Governments, should maintain and extend the Multi-Purpose Services Program by

….

f. establishing a cost-shared capital grants program to rebuild or refurbish older Multi-Purpose Services to ensure that the infrastructure meets contemporary aged care design standards, particularly to support the care of people living with dementia.

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Recommendation 140: Fees for residential aged care accommodation

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1. Pricing Authority should from time to time determine the Accommodation Supplement as the maximum amount or amounts payable for the accommodation of a resident eligible to receive the supplement under the means test (an eligible resident), based on an analysis of the efficient costs of delivering high quality accommodation and a reasonable rate of return on capital investment. The Pricing Authority may determine one uniform amount to apply in all cases, or a number of different amounts based on factors such as the date of construction or refurbishment of the facility, the size or other features of the room, and the region or degree of remoteness of the location of the facility.