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Get Real

Mallesons Real Estate Insights



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Welcome to the inaugural edition of

Get Real

We are pleased to present the first edition of Get Real, our flagship real estate publication exploring the latest legal and commercial developments across the sector.

Why now, and why this format? We wanted to create a concise publication that highlights the issues shaping the sector and why they matter.

In this first edition, we examine key trends, opportunities and emerging issues drawn from our work with clients across the sector.

We hope these perspectives provide useful context for the decisions ahead — and that you find them as interesting as we do.

In this edition, we look at trends affecting two of the highest growth areas in real estate development: co-living and datacentres.

On **co-living**, we explore why it is gaining momentum as an institutional asset class, where it sits within the broader living sector and the practical considerations for developers and investors pursuing co-living opportunities.

We look at how Australia's **capital gains tax reforms** could reshape transaction timetables, compliance obligations and exit economics for foreign investors, fund managers and real estate owners.

We examine why **national security and domestic politics** are becoming integral to Australian real estate investment — and how regulatory preparedness can create a competitive advantage.

On **data centres**, we examine how ownership, operational control and contractual arrangements shape emissions reporting — and what operators and customers should consider to avoid gaps or double counting.

We look forward to your feedback and sharing further updates in the series.



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Co-living: The Dream?

Australia's co-living sector is gaining momentum as housing demand, planning support and institutional investment converge.

WHAT IS CO-LIVING?

At its core, co-living is purpose-built, managed accommodation where residents have their own private room or studio but share communal spaces with utilities, furnishings and services bundled into a single fee.

As a product, it sits somewhere between conventional rental accommodation and more highly serviced forms of living such as serviced apartments and hotels, with an emphasis on flexibility, amenity and community.

WHY CO-LIVING AND WHY NOW?

Co-living is attracting increasing attention from developers and global investors and is now beginning to gain serious traction in Australia as an asset class in its own right.

For those who have watched the Australian build-to-rent (**BTR**) sector flourish over the past decade, the trajectory may look familiar. Co-living is moving from an "alternative" housing model towards a more established and mainstream living product. The question is increasingly not whether the asset class will grow, but how quickly and what form that growth will take.

The demand drivers are well understood, and co-living as an asset class is benefitting from macro and regional tailwinds. Housing affordability and rental pressures remain significant in all Australian major cities. Co-living provides another option for renters, including younger professionals, students, key workers, and people moving between different life stages who may want flexibility, community and a serviced living experience without the cost or commitment associated with a conventional apartment.

NSW has also provided a relatively clear planning pathway and has also benefited from the NSW Government's Transport Oriented Development program. This emerging sector has led to the rezoning of land to increase density and boost housing supply. Co-living was formally introduced into the NSW planning system by the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**). The minimum lot size is 600m² on R2 Low Density Residential land and 800m² on other eligible land, and qualifying co-living development can attract a 10% floor space ratio bonus. By comparison, qualifying boarding house development attracts a 30% bonus, reflecting its affordable housing requirements.

Core living products in Australia (such as student, BTR, retirement, land lease) have benefited from a consistent flow of capital from on and offshore investors, but we are seeing global sponsors and institutional investors now actively allocate capital to co-living products. Investment in the Asia-Pacific living sector hit US$13.8 billion in 2025[1], and Cushman & Wakefield's inaugural APAC Living Investor Survey showed that investors are allocating an estimated US$33.2 billion of capital to APAC living products alone[2]. Co-living is now the second most targeted living segment in the region, behind BTR and ahead of PBSA.

Australia's development pipeline reflects that interest and investment. Knight Frank puts the national co-living pipeline at more than 10,000 units, comprising more than 2,000 operational units, a further 4,159 under construction or approved and another 3,647 planned or proposed. Sydney accounts for more than 90% of completed schemes nationally, while NSW accounts for 83% of the overall pipeline[3].

WHERE DOES CO-LIVING FIT IN THE BROADER LIVING SECTOR?

Increasingly, the question for developers is not necessarily "BTR or co-living?" but what combination of living uses works best for a particular site.

The emerging pipeline demonstrates this 'multi-use' strategy. Freecity recently received development approval for a 548-home precinct opposite Rouse Hill Metro comprising 332 BTR apartments and 216 co-living studios. TOGA's proposed $553 million Five Dock precinct similarly combines 190 co-living units with 676 BTR and build-to-sell apartments.

The boundaries between traditional and non-traditional asset classes are also merging. Hospitality groups are moving into longer-term living products, while residential operators are experimenting with combinations of co-living, short-stay accommodation, BTR and other managed living models.

This points to a broader shift. Rather than treating BTR, co-living, student accommodation and hospitality as entirely separate asset classes, developers and investors are increasingly considering where different living products sit along the same living spectrum, and often in conjunction with other lifestyle amenities, such as childcare, retail and hospitality.



NSW PLANNING POSITION

Consent cannot be granted for the purposes of co-living housing unless the consent authority is satisfied that the **Housing SEPP** standards are met. This means it must:

- provide a primary place of residence for occupants and cannot be used for short-term tourist and visitor accommodation;
- comprise at least 6 private rooms;
- generally provide private rooms between 12m² and 25m², excluding private kitchen and bathroom facilities, with a 16m² minimum where a room is intended for more than one occupant;
- provide adequate bathroom, laundry and kitchen facilities together with adequate bicycle and motorcycle parking spaces; and
- have a manager responsible for implementing the property's management, with an appropriate workspace provided for the manager (the manager does not always have to be on site but must be contactable by phone 24/7).

The Housing SEPP also contains non-discretionary development standards. For example, a six-room development must provide at least 30m² of communal living space. For developments containing more than six rooms, a further 2m² is required for each additional private room. Communal open space must generally comprise at least 20% of the site area and it must satisfy certain floor space ratio, parking and minimum landscaping requirements.

These standards matter commercially as well as from a planning perspective. If a development complies with a non-discretionary standard, the consent authority cannot impose a more onerous standard for that matter.

1. Investors home in on Singapore co-living, Hong Kong student housing in Apac's US$13.8 billion living boom - The Business Times
2. APAC Living Investor Survey 2026 | Cushman & Wakefield
3. Development of co-living units expected to accelerate in 2026 - Knight Frank

PRACTICAL POINTS FOR DEVELOPERS

Practical lessons are already emerging from the Australian perspective:

- **Start with the operating model, not just the building**. Co-living is an operational real estate product and requires the right management team and operating model. The legal and regulatory framework applicable to a particular development can depend on how it will actually operate, not simply how it is labelled. Management structure, resident arrangements, services, common areas and the degree of control retained by the operator should therefore be considered at the site-selection and design stages rather than after the building has been designed.
- **Design for flexibility**. The living sector is evolving quickly. Where planning, design and feasibility permit, developments that can respond to changing demand or accommodate different living products may be better placed over their lifecycle. The mixed BTR/co-living schemes proposed at Rouse Hill and Five Dock are early examples of developers thinking across living categories rather than within a single asset class.
- **Bring capital and financing into the conversation early.** Institutional appetite for living assets is increasing, but co-living remains a relatively young asset class in Australia. Financing, valuation and exit assumptions should be tested early, particularly where a project's feasibility depends on an operating model or income profile with limited local precedent.
- **Think beyond development approval.** For institutional capital, the development approval is only one part of the picture. Investors and financiers will also focus on the regulatory framework, operating platform, management capability, stabilised income and the ability to scale the model across multiple assets. Like any other living asset class, the largest gains will be realised by capital partners who back the right management team who have the right operational experience and can demonstrate a track record in careful asset selection.
- **Get the structure right from the start.** Where a co-living platform is intended to scale, separate the property-owning vehicle from the operating vehicle from the outset. Property ownership produces passive, long-term income, while the operating business carries the trading and management risk. Keeping the two apart lets investors back the property, the platform or both. It can also support a more efficient tax structure, keep operational liabilities away from the real estate, and keep exit options open. Making this separation later, once assets and investors are in place, is costly and often impractical.

Co-living depends on development, planning, construction, finance, investment and operational expertise. Developers and investors that understand that whole lifecycle rather than approaching co-living simply as another residential development will be best placed to navigate a sector that is developing quickly.



The Ground Is Shifting: What Australia's CGT Reforms Mean for the Real Estate Sector

Recent and proposed changes to Australia's capital gains tax (CGT) regime will materially affect the economics of real estate investment. Here's what foreign investors, fund managers and their advisers should be considering now.

1 FOREIGN RESIDENT CGT REFORMS

Under the foreign resident CGT regime, capital gains and losses made by foreign residents holding assets on capital account are disregarded unless the CGT event happens in relation to assets that are taxable Australian property (**TAP**). TAP includes taxable Australian real property (**TARP**) and an indirect Australian real property interest (**IARPI**).

Federal Parliament has passed comprehensive reforms to the foreign resident CGT regime. The amendments are effective from 1 October 2026. Three aspects of the reform warrant particular attention.

Expanded definition of real property

A central feature of the reform is the introduction of a statutory definition of 'real property' which significantly broadens the scope of assets in relation to which foreign investors will be subject to tax in Australia. Previously undefined for income tax purposes, 'real property' will now capture anything that is fixed or installed on Australian land, as well as any lease, licence or contractual right exercisable over such assets. This concept of 'real property' is one of the broadest adopted by any jurisdiction, including when compared with Australia's treaty partners.

This gives rise to double-counting concerns as multiple 'real property related' interests could be recognised in respect of a single underlying asset. For example, both a lessor and lessee, or an owner and licensee, could separately hold 'real property' interests for tax purposes in the same underlying asset.

If any of these parties are foreign residents, they would need to be aware that the relevant real property interests could be material to the foreign resident CGT analysis in one of two ways:

- Where the interest is held directly by the foreign resident, it may constitute TARP.
- Where the interest is held by an entity in which the foreign resident has a membership interest, it may form part of the entity's TARP assets for the purpose of determining whether that membership interest is an IARPI. Broadly, an IARPI arises where the foreign resident, together with its associates, holds a 10% or greater interest in the entity and more than 50% of the entity's underlying value is attributable to TARP.

New notification requirement

Under the foreign resident CGT regime, a vendor disposing of interests in an entity may provide a non-IARPI vendor declaration to the purchaser. If the purchaser is able to rely on the declaration (see below), they do not need to withhold CGT on a sale.

A new ATO notification requirement has been introduced to operate alongside the existing non-IARPI vendor declaration. Importantly, a foreign resident vendor disposing of membership interests with an aggregate market value of $50 million or more must notify the Commissioner of Taxation before providing a non-IARPI vendor declaration to the purchaser. The notification must be lodged at least 28 days before transfer if the review period exceeds 31 days. If the review period is 31 days or less, the notification must be lodged as soon as reasonably practicable before transfer. The purchaser cannot rely on the declaration unless these requirements are satisfied. There is a Ministerial power to specify, by legislative instrument, transaction types that are exempt from the notification requirements.

Furthermore, whereas previously the knowledge threshold for reliance by purchasers was subjective – that is, whether the purchaser knew that the declaration was false - it is now objective. The question is whether it 'could reasonably be concluded' that the declaration is false. This imposes a positive due diligence burden on bidders which is ongoing (i.e. up to the date of signing or such other date as is applicable to the CGT event) and should be factored into deal timetables.

The 365-day test

The test for whether a foreign investor's indirect interest in an entity is taxable has also changed. The Principal Asset Test (PAT) will no longer operate as a point-in-time test. Rather, a non-portfolio membership interest will be an IARPI if the underlying entity derives more than 50% of its market value from TARP at any time during the 365 days preceding the disposal.

There is a Ministerial power to determine, by legislative instrument, circumstances in which an alternative testing time applies for the 365-day PAT look-back. The practical utility of this power will depend on the breadth of the circumstances prescribed by the Minister (if any), noting that it is expected that many taxpayers will have material issues complying with the revised default test.

365-day testing, combined with the knowledge requirement of a purchaser in respect of a non-IARPI declaration and the vendor notice requirements, is likely to make compliance onerous and costly as the target's asset composition must be monitored continuously until the date of signing (or such other date as is applicable to the relevant CGT event), rather than assessed at a single point in time.

2 REMOVAL OF THE 50% CGT DISCOUNT

From 1 July 2027, the 50% CGT discount for individuals, trusts, and partnerships will be replaced by cost-base indexation, with a new 30% minimum tax on net capital gains. Under this method, the cost base will be adjusted for inflation over the holding period, with tax payable only on the real gain.

The practical effect on real estate exit economics depends on the rate of return on the asset, the rate of inflation over the holding period, and the investor's marginal tax rate. However, for investors earning above-inflation returns, the new regime will in most cases result in a higher tax burden on exit. To illustrate: under the current 50% discount, the effective top rate on a long-term capital gain for an individual or trust is approximately 23.5%. Under the new regime, the 30% minimum tax means the effective rate cannot fall below 30%, and may approach the taxpayer's marginal rate.

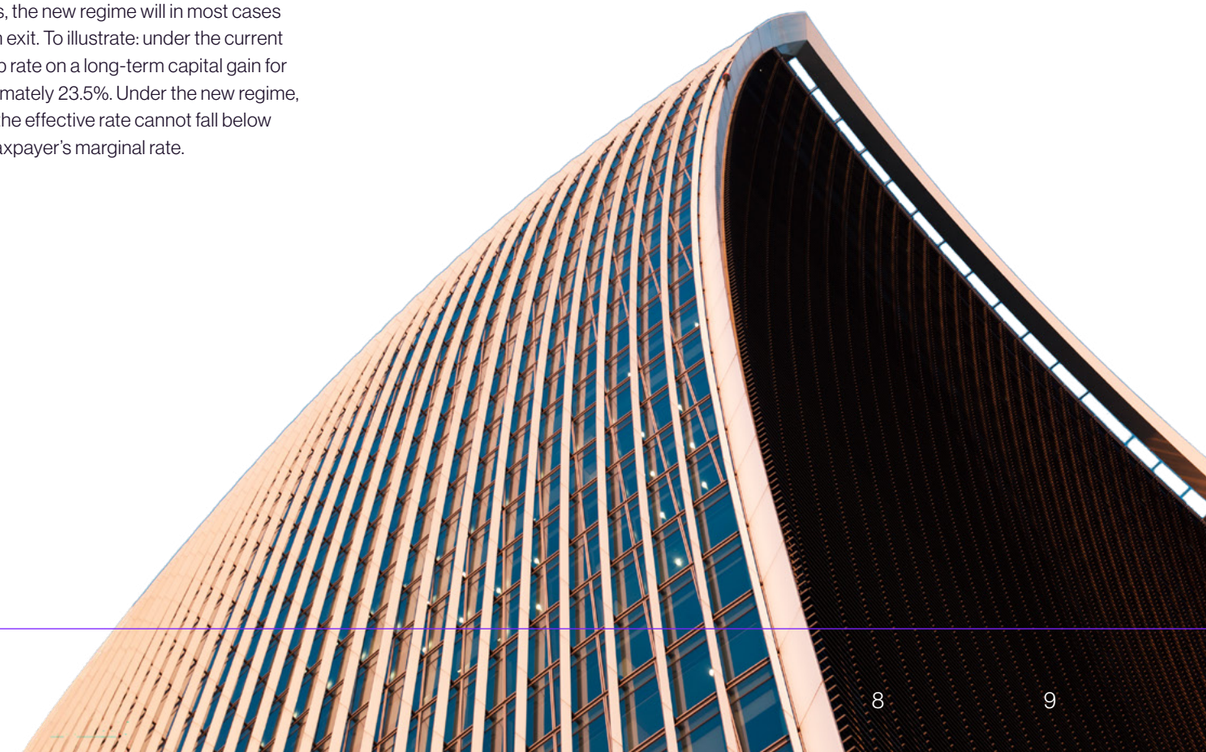
Superannuation funds, however, retain the existing one-third CGT discount and are not directly affected. In sectors where valuations are highly sensitive to tax leakage and exit assumptions — including commercial and residential real estate — this creates a material competitive advantage for domestic super funds in bids, co-investments, and secondary market exits. Companies are also unaffected by the reform, as they were never eligible for the 50% discount.

Transitional arrangements will split gains on assets held before 1 July 2027 into two components: the portion accruing before 1 July 2027 continues to benefit from the 50% discount, while the portion accruing after that date is subject to the new rules. Investors should obtain valuations of their real estate assets as at 1 July 2027 to establish the boundary between the two regimes.

To maintain incentives for new housing supply, investors in new residential properties will be able to choose either the 50% CGT discount or the new cost-base indexation and minimum tax arrangements.

3 WHAT THIS MEANS FOR REAL ESTATE INVESTORS

Australia's recent and proposed tax reforms represent the most significant reshaping of the investment landscape for real estate investors in decades. Taken together, the expansion of the foreign resident CGT rules and replacement of the 50% CGT discount increase both the compliance burden and potential tax cost of holding and exiting Australian real estate investments.



Real estate: At the intersection of national security and domestic politics

Domestic politics and national security regulation are now central to the investment thesis for Australian real estate.

Foreign investment screening, critical infrastructure controls, competition policy, tax settings, state duties and planning regimes are all converging with the traditional drivers of value for real estate. The Federal Government is asking harder questions about who owns strategic assets, where the capital comes from, and what role particular holdings play in Australia's economic sovereignty.

For investors deploying capital at scale, this amounts to a structural shift in how Australian real estate is priced, transacted, and held. But it also creates real opportunity. Investors who integrate regulatory and political analysis into their process early can turn that complexity into an edge.

WHEN REAL ESTATE BECOMES A STRATEGIC ASSET?

The line between real estate and national security infrastructure is increasingly harder to draw.

Consider the asset classes attracting the most institutional capital right now: data centres, last-mile logistics and agriculture. Each of these is increasingly assessed not just on commercial merit but through the lens of economic resilience and national security.

Government scrutiny of capital has intensified materially and the regulatory perimeter is expanding. What may be less obvious is this reclassification does not end at critical infrastructure.

WHERE POLITICS MEETS INVESTMENT

Population growth, migration policy, and housing supply have become a single, high-stakes political story. At every level of Government, there is sustained pressure to show that population settings are matched by the capacity to deliver homes, infrastructure, and services. Housing affordability is no longer a cyclical concern — it is a permanent fixture of Australia's political landscape.

For institutional investors, that means capital allocation is not limited to cap rates. There is now a powerful public discourse around affordability and supply that directly affects how projects are assessed, approved, and perceived.

The flip side is opportunity. Investors who can show their capital genuinely contributes to supply are more likely to obtain both foreign investment and other approvals. Co living, student accommodation, build-to-rent and other institutionally managed housing models are better positioned to secure government engagement and community acceptance. Social licence is increasingly a real and significant part of the investment case. The strongest risk-adjusted returns will increasingly belong to investors who can align commercial objectives with a politically credible contribution to housing supply.

For cross-border capital, this is especially important. Foreign capital entering Australian real estate needs to understand not just the technical requirements of the foreign investment regime but the broader political ecosystem of public sentiment, government policy and regulatory agencies (including local governments).

BUYING AND SELLING

In competitive processes, this matters more than it used to. Regulatory certainty now ranks alongside price and execution capability as a genuine differentiator. Vendors increasingly favour bidders who can show that foreign investment, competition, and planning approvals are well understood and can be obtained on a predictable timetable. In a market where execution certainty commands a premium, regulatory preparedness is a competitive asset in its own right.

There is a direct implication here for how domestic and international capital compete. Australian REITs and managers carry an advantage to reduce regulatory friction and can assist international investors as part of consortium arrangements to smooth the process and provide a social licence.

Regulatory settings, strategic asset classifications, ownership structures and tax positions can all shift materially during a hold period — and any of those shifts can make disposal significantly more complex. An asset that was straightforward to acquire can become very difficult to sell if its national security or political classification changes, which may result in a smaller buyer pool. Exit planning needs to be part of the regulatory strategy from the outset.



So, what does this mean?

Assess strategic significance
Work out how the Australian government is likely to view the target asset through a national security lens — and how that might evolve over the hold period.

Map the regulatory environment early
Foreign investment, competition, planning, and tax approvals all need to be scoped.

Timing
The timing of deployment should account for where the regulatory and policy environment is heading, not just where it is today.

Ultimately, the questions that matter for any Australian real estate investment now should include:

1. What is the strategic significance of this asset today — and what might it become?
2. Where does the capital come from and does that introduce regulatory or political risk?
3. Is the structure fit for purpose across the full lifecycle of the investment?
4. How does Australia's domestic political environment affect the asset's long-term value and liquidity?

Regulation is not a hurdle between signing and settlement. It is one of the variables that shapes what to buy, when to buy it, how to structure it, who to partner with and what the investment is ultimately worth.

For investors in Australian real estate, regulatory and political sophistication is not just risk management — it is a source of genuine competitive advantage.

Whose emissions?

NGER and Scope 3 considerations for data centres, digital infrastructure and co-location arrangements

Growth in digital infrastructure is creating practical questions for Australian businesses about how to categorise electricity-related emissions for reporting purposes.

This is particularly the case for data centres, co-location facilities, telecommunications sites, satellite ground stations and shared access arrangements, where one party may own or operate the site, another may own the equipment, and energy use may be sub-metered or passed through commercially.

Reporting under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) turns on two key questions: how the shared 'facility' is defined and who has 'operational control' of that facility or part of it. A party has operational control where it has the greatest authority to introduce and implement operating, and environmental policies.

However, under the *Corporations Act 2001* (Cth) (**Corporations Act**) and Australian Accounting Standards Board AASB S2 Climate-related disclosures (**AASB S2**), emissions outside the entity's Scope 2 reporting boundary may still need to be considered as Scope 3 emissions if they are material indirect greenhouse gas emissions occurring in the entity's value chain.

DATA CENTRES SPECIFICALLY

A data centre will often be treated as one facility, with emissions reported by the data centre operator under their Scope 2 emissions. Data centre customers might report the emissions from their energy consumption at these data centres under their Scope 2 emissions, Scope 3 emissions, or not at all.

The reporting analysis turns on how the facility is defined, and which entity has 'operational control'. 'Operational control' under the NGER Act means the greatest authority to introduce and implement operating, health and safety, and environmental policies. 'Operational control' under the international framework for reporting greenhouse gas emissions, the GHG Protocol, means the full authority to introduce and implement operating policies. Either way, it means looking closely at who controls the equipment, who can access the relevant area, who sets operating conditions, who manages power and cooling, and how electricity use is metered.

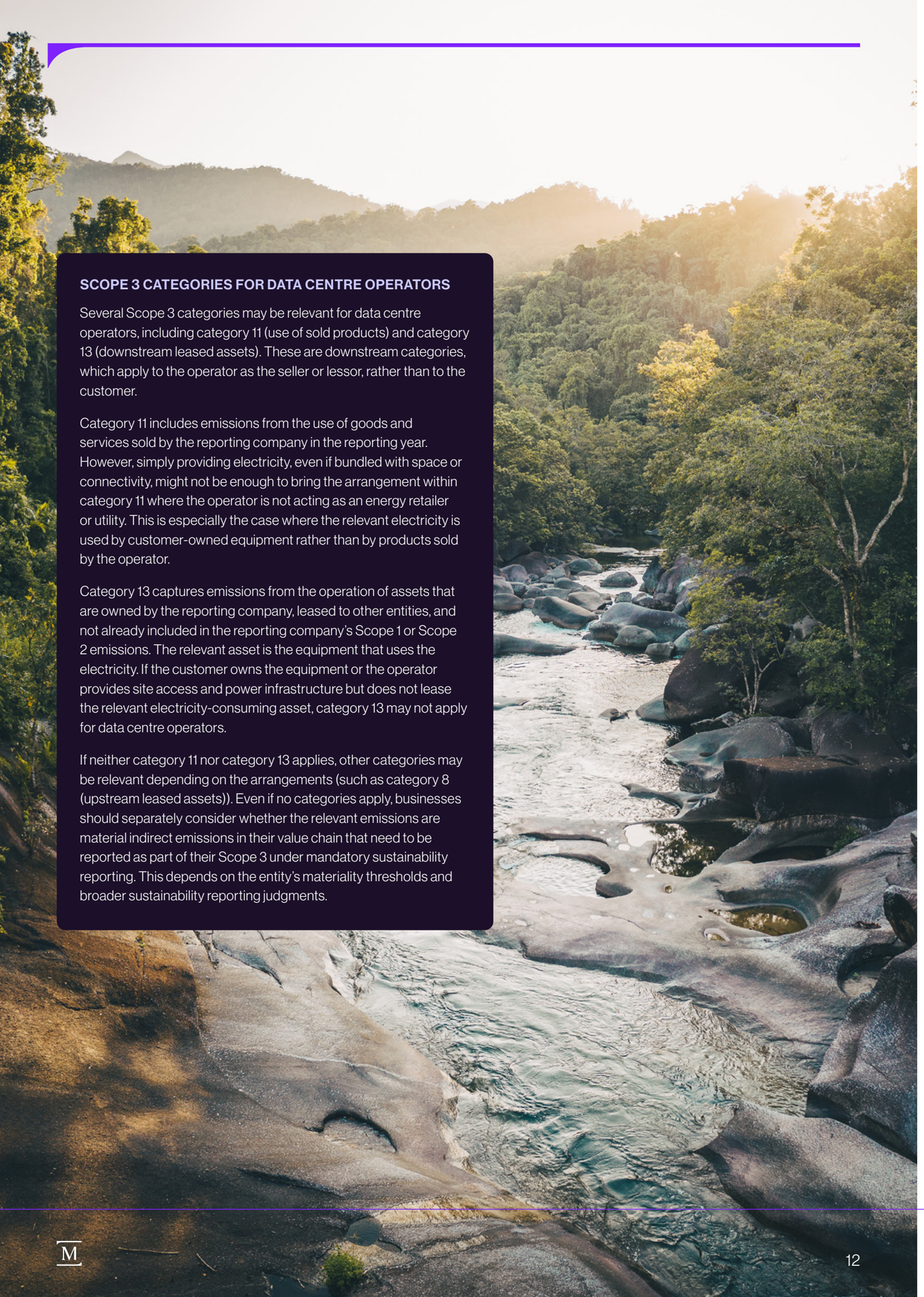
Where a customer has exclusive locked racks, separate metering and practical authority over the operation of its equipment, it is likely that they will be treated as having operational control of that component, if that component is treated as a separate facility. In this scenario, emissions would be considered the Scope 2 emissions of the customer, rather than the data centre operator.

SCOPE 2 OR SCOPE 3

The Scope 2 position will usually follow from the NGER facility boundary and operational control analysis. If the operator has operational control of the relevant facility, electricity consumption at that facility may sit within the operator's Scope 2 reporting boundary. If the customer has operational control of a separate facility or component facility, the electricity consumed by the customer's equipment may sit within the customer's Scope 2 reporting boundary.

If both the operator and the customer report the same electricity consumption as Scope 2 emissions, there is a risk of double counting. Conversely, if each party assumes the other is reporting the emissions, there is a risk that emissions are missed entirely.

If not reported as Scope 2, each entity – customer and operator – should still consider whether they fall within Scope 3, including whether they are captured by category 11 (use of sold products), category 13 (downstream leased assets) or separately as material Scope 3 emissions under AASB S2.



SCOPE 3 CATEGORIES FOR DATA CENTRE OPERATORS

Several Scope 3 categories may be relevant for data centre operators, including category 11 (use of sold products) and category 13 (downstream leased assets). These are downstream categories, which apply to the operator as the seller or lessor, rather than to the customer.

Category 11 includes emissions from the use of goods and services sold by the reporting company in the reporting year. However, simply providing electricity, even if bundled with space or connectivity, might not be enough to bring the arrangement within category 11 where the operator is not acting as an energy retailer or utility. This is especially the case where the relevant electricity is used by customer-owned equipment rather than by products sold by the operator.

Category 13 captures emissions from the operation of assets that are owned by the reporting company, leased to other entities, and not already included in the reporting company's Scope 1 or Scope 2 emissions. The relevant asset is the equipment that uses the electricity. If the customer owns the equipment or the operator provides site access and power infrastructure but does not lease the relevant electricity-consuming asset, category 13 may not apply for data centre operators.

If neither category 11 nor category 13 applies, other categories may be relevant depending on the arrangements (such as category 8 (upstream leased assets)). Even if no categories apply, businesses should separately consider whether the relevant emissions are material indirect emissions in their value chain that need to be reported as part of their Scope 3 under mandatory sustainability reporting. This depends on the entity's materiality thresholds and broader sustainability reporting judgments.

WHAT THE MARKET IS DOING

Publicly available sustainability reporting shows that practice is not settled. For NGER purposes, operators have generally reported electricity consumed by customer equipment as their own Scope 2 emissions.

In their sustainability reports under AASB S2, data centre operators have approached this in different ways. Each of the below are the reporting approaches of different operators:

- DC operator 1 classifies electricity used by customer IT equipment as Scope 3 category 13;
- DC operator 2 excludes electricity used by customer IT equipment from its Scope 2 emissions as electricity supplied to end users, while keeping cooling and shared infrastructure electricity in its Scope 2 emissions. DC operator 2 relied on first-year relief not to report Scope 3 emissions, so it is not yet clear where it will report those emissions in future years; and
- DC operator 3 reports customer electricity as Scope 3 category 13 only where the customer takes ownership of it, and otherwise reports it as their own Scope 2 emissions.

On the customer side, sustainability reports show that major Australian customers also approach data centre emissions reporting in different ways.

For example:

- Customer 1 reports electricity from third-party data centres as Scope 3 category 1 emissions, based on invoiced consumption apportioned to it by the supplier;
- Customer 2 likewise reports its use of co-located data centres within Scope 3 category 1, where the provider reports Customer 2's energy consumption as the provider's own Scope 2 emissions; and
- by contrast, Customer 3 reports data centre emissions within its Scope 1 and 2 emissions on an operational control basis, where it has oversight and pays for electricity usage or when it owns and controls the equipment at the data centre (having reclassified those emissions from Scope 3 in earlier years).

Reporting customer data centre emissions as Scope 3 generally assumes the operator is reporting the electricity as Scope 2. As some operators move customer IT electricity outside their Scope 2 in their sustainability reports, customers and operators should not assume their counterparty's reporting is consistent with their own.

CONTRACTING FOR REPORTING CERTAINTY

Finally, it is generally the contract and operating model that will determine which entity reports emissions. Businesses should consider their agreements to assess who should report electricity consumption, whether energy use is sub-metered, who owns the equipment and controls access and who may introduce and implement operating, health and safety, and environmental policies.

Entities should also consider expressly allocating responsibility for reporting electricity consumption as Scope 2 emissions. This is particularly important for large-scale data centre procurement, co-location, satellite ground station, customer rack and other digital infrastructure arrangements where operational rights, ownership and metering might point in conflicting directions for reporting purposes. Businesses should assess these issues early, rather than waiting until reporting deadlines are approaching.

Our team has expertise in climate reporting, sustainability regulations, digital infrastructure and data centre arrangements. If you have any questions about NGER reporting, Scope 2 and Scope 3 emissions treatment or sustainability reporting requirements for digital infrastructure arrangements, please get in touch.

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