



New South Wales

Environmental Planning and Assessment Amendment (SEPP 65) Regulation 2002

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

ANDREW REFSHAUGE, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to make provisions to complement those contained in *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* to ensure the achievement of the design quality principles for residential flat development set out in Part 2 of that Policy. **Residential flat development** is defined in that Policy to mean development being:

- (a) the erection of a new residential flat building, and
- (b) the substantial redevelopment or the substantial refurbishment of an existing residential flat building, and
- (c) the conversion of an existing building to a residential flat building.

A **residential flat building** is defined in that Policy to mean a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and

2002 No 525

Environmental Planning and Assessment Amendment (SEPP 65) Regulation 2002

Explanatory note

(b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),

but does not include a Class 1a building or a Class 1b building under the *Building Code of Australia*. Class 1a and Class 1b buildings are commonly referred to as “town houses” or “villas” where the dwelling units are side by side, rather than on top of each other.

The provisions of this Regulation address the following elements of the development control process:

Development control plans

A council must not approve a draft development control plan (including an amending plan) containing provisions that apply to the design quality of residential flat development unless the council has referred the provisions to the design review panel (if any) constituted for the council’s area (or a region that includes the council’s area) under *SEPP 65* and has taken into consideration any comments made by the panel concerning those provisions.

Development applications for residential flat development

A development application for residential flat development will be required to be accompanied by a design verification from a registered architect (referred to in the Regulation as a *qualified designer*) verifying that the qualified designer designed, or directed the design, of the development and that the design quality principles of *SEPP 65* are achieved.

In addition, the statement of environmental effects that is to accompany a development application will now be required to include a range of information that explains and justifies the design of the residential flat development in terms of the design quality principles of *SEPP 65*.

Applications for modification of development consents

If a development application for residential flat development was required to be accompanied by a design verification from a qualified designer, an application to modify (other than in a minor respect) a development consent granted for the development will be required to be accompanied by a design verification verifying that the modifications do not adversely affect the quality of the design.

The consent authority may refer the proposed modification to the relevant design review panel.

Construction certificates for residential flat development

If a development application for residential flat development was required to be accompanied by a design verification from a qualified designer, a certifying authority must not issue a construction certificate for the development unless the certifying authority has received a design verification from a qualified designer in which the qualified designer verifies that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in *SEPP 65*.

Occupation certificates for residential flat development

If a development application for residential flat development was required to be accompanied by a design verification from a qualified designer, a certifying authority must not issue an occupation certificate for the development unless the certifying authority has received a design verification from a qualified designer in which the qualified designer verifies that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in *SEPP 65*.

Fees

An additional fee, not exceeding \$600, is payable in respect of residential flat development that is referred to a design review panel under *SEPP 65*.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 72 (2), 78A (9), 81A (5), 96 (2), 109C (1) (a) (iv), 109H (1) (d) and 157 (the general regulation-making power).

2002 No 525

Clause 1 Environmental Planning and Assessment Amendment (SEPP 65)
 Regulation 2002

Environmental Planning and Assessment Amendment (SEPP 65) Regulation 2002

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (SEPP 65) Regulation 2002*.

2 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Clause 3 Definitions

Insert in alphabetical order:

qualified designer means a person registered as an architect in accordance with the *Architects Act 1921*.

Note. A building designer may be able to be registered as an architect in accordance with the *Architects Act 1921* even though the person may have no formal qualifications in architecture.

residential flat development has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

[2] Clause 21A

Insert after clause 21:

21A Approval of development control plans relating to residential flat development

- (1) The council must not approve a draft development control plan (including an amending plan) containing provisions that apply to residential flat development unless the council:
 - (a) has referred the provisions of the draft development control plan that relate to design quality to the design review panel (if any) constituted for the council's area (or a region that includes the council's area) under *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*, and
 - (b) has taken into consideration any comments made by the design review panel concerning those provisions.
- (2) This clause extends to a plan the preparation of which commenced before the constitution of the relevant design review panel.

2002 No 525

Environmental Planning and Assessment Amendment (SEPP 65)
Regulation 2002

Schedule 1 Amendments

[3] Clause 50 How must a development application be made?

Insert after subclause (1):

- (1A) A development application that relates to a residential flat development, and that is made 12 months or more after the date of commencement of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*, must be accompanied by a design verification from a qualified designer, being a statement in which the qualified designer verifies:
- (a) that he or she designed, or directed the design, of the residential flat development, and
 - (b) that the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* are achieved for the residential flat development.

[4] Clause 115 What are the requirements for an application for modification of a development consent?

Insert after subclause (1):

- (1A) In addition, an application for the modification of a development consent under section 96 (2) of the Act, if it relates to residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), must be accompanied by a design verification from a qualified designer, being a statement in which the qualified designer verifies that:
- (a) he or she designed, or directed the design, of the modification of the residential flat development, and
 - (b) the residential flat development, as modified, achieves the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*, and
 - (c) the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.

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- (1B) The consent authority may refer the proposed modification to the relevant design review panel.

[5] Clause 143A

Insert after clause 143:

143A Special requirements for construction certificates for residential flat development

- (1) This clause applies to residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A).
- (2) A certifying authority must not issue a construction certificate for residential flat development unless the certifying authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

[6] Clause 154A

Insert after clause 154:

154A Special requirements for occupation certificates for residential flat development

- (1) This clause applies to residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A).
- (2) A certifying authority must not issue an occupation certificate to authorise a person to commence occupation or use of residential flat development unless the certifying authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect

2002 No 525

Environmental Planning and Assessment Amendment (SEPP 65)
Regulation 2002

Schedule 1 Amendments

of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

[7] Clause 248

Insert after clause 247:

248 Residential flat development

An additional fee, not exceeding \$600, is payable for development which is required to be referred to a design review panel under *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

[8] Clause 258 What is the fee for an application for modification of a consent for local development or State significant development?

Insert after clause 258 (2):

(2A) An additional fee, not exceeding \$600, is payable for development to which clause 115 (1A) applies.

[9] Clause 258 (3A)

Insert after clause 258 (3):

(3A) The consent authority must refund the additional fee paid under subclause (2A) if the development is not referred to a design review panel.

[10] Schedule 1 Forms, Part 1 Development applications

Insert after clause 2 (4):

(5) In addition, a statement of environmental effects referred to in subclause (1) (c) must include the following, if the development application relates to residential flat development to which *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* applies:

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- (a) an explanation of the design in terms of the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*,
 - (b) drawings of the proposed development in the context of surrounding development, including the streetscape,
 - (c) development compliance with building heights, building height planes, setbacks and building envelope controls (if applicable) marked on plans, sections and elevations,
 - (d) drawings of the proposed landscape area, including species selected and materials to be used, presented in the context of the proposed building or buildings, and the surrounding development and its context,
 - (e) if the proposed development is within an area in which the built form is changing, statements of the existing and likely future contexts,
 - (f) photomontages of the proposed development in the context of surrounding development,
 - (g) a sample board of the proposed materials and colours of the facade,
 - (h) detailed sections of proposed facades,
 - (i) if appropriate, a model that includes the context.