



New South Wales

# Environmental Planning and Assessment Amendment (Housing) Regulation 2021

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*.

ROB STOKES, MP  
Minister for Planning and Public Spaces

## Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* as follows—

- (a) to prescribe conditions of a development consent involving boarding houses, co-living housing, in-fill affordable housing, certain residential flat buildings and seniors housing,
- (b) to require the name of the registered community housing provider who will be managing a boarding house to be included in development applications for boarding houses,
- (c) to require a copy of the plan of management for a boarding house or co-living housing to be included in the development application concerned,
- (d) to enable a monetary contribution for affordable housing to be paid by electronic transfer into an account nominated by the relevant consent authority,
- (e) to make other amendments consequent on the commencement of *State Environmental Planning Policy (Housing) 2021*.

## **Environmental Planning and Assessment Amendment (Housing) Regulation 2021**

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### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Housing) Regulation 2021*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

### [1] Clause 3 Definitions

Omit the definition of *BASIX affected building* from clause 3(1). Insert instead—

*BASIX affected building* means a building containing at least 1 dwelling, but does not include the following types of development as defined in the Standard Instrument—

- (a) hotel or motel accommodation, or
- (b) a boarding house, hostel or co-living housing that—
  - (i) accommodates more than 12 residents, or
  - (ii) has a gross floor area of more than 300 square metres.

### [2] Clause 3(1), definition of “site compatibility certificate”

Omit paragraph (c).

### [3] Clause 3(1), definition of “site compatibility certificate (affordable rental housing)”

Omit “clause 37(5) of *State Environmental Planning Policy (Affordable Rental Housing) 2009*”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, clause 39”.

### [4] Clause 3(1), definition of “site compatibility certificate (seniors housing)”

Omit the definition.

### [5] Clause 25L

Insert after clause 25K—

#### 25L Electronic transfer of affordable housing contribution

If a condition is imposed on a development consent under the Act, section 7.32 requiring the payment of a monetary contribution to be used for the purpose of providing affordable housing, the monetary contribution may be paid by electronic transfer into an account nominated by the relevant consent authority.

### [6] Part 6, Division 8A, Subdivision 1

Insert after the heading to Division 8A—

#### Subdivision 1 Development generally

### [7] Part 6, Division 8A, Subdivision 2

Insert before clause 98F—

#### Subdivision 2 Development permitted under State Environmental Planning Policy (Housing) 2021

##### 98EA Definitions

In this Subdivision—

*Affordable Housing Guidelines* means the document titled “*NSW Affordable Housing Ministerial Guidelines*” published by the Department of

Communities and Justice in August 2020, as approved by the Minister for Families, Communities and Disability Services from time to time.

**registered community housing provider** has the same meaning as in the *Community Housing Providers (Adoption of National Law) Act 2012*, section 13.

**Registrar of Community Housing** means the Registrar of Community Housing appointed under the *Community Housing Providers (Adoption of National Law) Act 2012*, section 10.

**[8] Clause 98F Conditions relating to development involving use of buildings as build-to-rent housing**

Omit “Part 2, Division 6A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*” from clause 98F(1).

Insert instead “*State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 4”.

**[9] Clause 98F(3), definition of “tenanted component”**

Omit “clause 41A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, clause 71”.

**[10] Clauses 98G–98K**

Insert after clause 98F—

**98G Conditions relating to certain in-fill affordable housing—the Act, s 4.17(11)**

- (1) This clause applies to development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 1, other than—
  - (a) development on land owned by the Land and Housing Corporation, or
  - (b) a development application made by, or on behalf of, a public authority.
- (2) Before the issue of an occupation certificate for the development—
  - (a) a restriction must be registered, in accordance with the *Conveyancing Act 1919*, section 88E, against the title of the property relating to the development, which will ensure the requirements of subclause (3)(a) and (b) are met, and
  - (b) evidence of an agreement with a registered community housing provider for the management of the affordable housing component must be given to the Registrar of Community Housing, including the name of the registered community housing provider, and
  - (c) the consent authority must be given evidence demonstrating the requirements of paragraph (a) and (b) have been met.
- (3) During the relevant period—
  - (a) the affordable housing component must be used for affordable housing, and
  - (b) the affordable housing component must be managed by a registered community housing provider, and
  - (c) notice of a change in the registered community housing provider who manages the affordable housing component must be given to the Registrar of Community Housing and the consent authority no later than 3 months after the change, and

- (d) the registered community housing provider who manages the affordable housing component must apply the Affordable Housing Guidelines.
- (4) In this clause—
- affordable housing component*** has the same meaning as in *State Environmental Planning Policy (Housing) 2021*, clause 21.
- relevant period*** means a period of 15 years commencing on the day an occupation certificate is issued for all parts of the building or buildings to which the development relates.

#### **98H Boarding houses**

- (1) This clause applies to development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 2.
- (2) Before the issue of an occupation certificate for the development—
  - (a) a restriction must be registered, in accordance with the *Conveyancing Act 1919*, section 88E, against the title of the property relating to the development, which will ensure the requirements of subclause (3)(a) and (b) are met, and
  - (b) evidence of an agreement with a registered community housing provider for the management of the boarding house must be given to the Registrar of Community Housing, including the name of the registered community housing provider, and
  - (c) the consent authority must be given evidence demonstrating the requirements of paragraph (a) and (b) have been met.
- (3) From the day on which an occupation certificate is issued for the development—
  - (a) the boarding house must be used for affordable housing, and
  - (b) the boarding house must be managed by a registered community housing provider in accordance with a plan of management, and
  - (c) notice of a change in the registered community housing provider who manages the boarding house must be given to the Registrar of Community Housing and the consent authority no later than 3 months after the change, and
  - (d) notice of a change to the plan of management must be given to the consent authority no later than 3 months after the change, and
  - (e) the registered community housing provider who manages the boarding house must apply the Affordable Housing Guidelines.

#### **98I Residential flat buildings—social housing providers, public authorities and joint ventures**

- (1) This clause applies to development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 5, other than—
  - (a) development on land owned by the Land and Housing Corporation, or
  - (b) a development application made by a public authority.
- (2) Before the issue of an occupation certificate for the development—
  - (a) a restriction must be registered, in accordance with the *Conveyancing Act 1919*, section 88E, against the title of the property relating to the development, which will ensure the requirements of subclause (3)(a) and (b) are met, and

- (b) evidence of an agreement with a registered community housing provider for the management of the residential flat building must be given to the Registrar of Community Housing, including the name of the registered community housing provider, and
  - (c) the consent authority must be given evidence demonstrating the requirements of paragraph (a) and (b) have been met.
- (3) During the relevant period—
- (a) 50% of the dwellings to which the development relates must be used for affordable housing (the *affordable housing dwellings*), and
  - (b) the affordable housing dwellings must be managed by a registered community housing provider, and
  - (c) notice of a change in the registered community housing provider who manages the affordable housing dwellings must be given to the Registrar of Community Housing and the consent authority no later than 3 months after the change, and
  - (d) the registered community housing provider who manages the affordable housing dwellings must apply the Affordable Housing Guidelines.
- (4) In this clause—
- relevant period* means a period of 10 years commencing on the day an occupation certificate is issued for all parts of the building or buildings to which the development relates.

#### **98J Co-living housing**

- (1) This clause applies to development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 3.
- (2) From the day on which an occupation certificate is issued for the development—
  - (a) the co-living housing must be managed in accordance with a plan of management by a managing agent who is contactable 24 hours a day, and
  - (b) notice of a change to the plan of management must be given to the consent authority no later than 3 months after the change, and
  - (c) private rooms and communal living areas in the co-living housing must contain appropriate furniture and fittings, maintained in a reasonable state of repair, for the use of residents.

#### **98K Seniors housing**

- (1) This clause applies to development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 5.
- (2) Before the issue of the occupation certificate for the development, a restriction will be registered, in accordance with the *Conveyancing Act 1919*, section 88E, against the title of the property relating to the development, which will ensure that the requirement of subclause (3) is met.
- (3) From the day on which an occupation certificate is issued for the development, only the following kinds of people may occupy the accommodation to which the development relates—
  - (a) seniors or people who have a disability,
  - (b) people who live in the same household with seniors or people who have a disability,

- (c) staff employed to assist in the administration and provision of services to the accommodation.

**[11] Clause 130AB Requirement to advise of applications for certain complying development certificates**

Omit clause 130AB(1)(c). Insert instead—

- (c) development specified in *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Parts 1 or 2.

**[12] Clause 186V Definitions**

Omit “*State Environmental Planning Policy (Affordable Rental Housing) 2009*, Part 3A” from clause 186V(2).

Insert instead “*State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 6”.

**[13] Clause 190A Complying development certificates and construction certificates for installation of fire sprinkler systems in residential care facilities for seniors**

Omit “for seniors” from clause 190A(1).

**[14] Clause 190A(2)**

Omit the subclause. Insert instead—

- (2) In this clause—  
*residential care facility* has the same meaning as in the Standard Instrument.

**[15] Clause 262A Fee for site compatibility certificate**

Omit clause 262A(3).

**[16] Schedule 1 Forms**

Insert after clause 1(1)(g)—

- (h) for a development application for development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 1 or 2—the name of the registered community housing provider who will be managing the boarding house,
- (i) for a development application for development for the purposes of a boarding house or co-living housing—a copy of the plan of management.

**[17] Schedule 1, clause 2(1)(p)**

Omit “Part 2, Division 1 of the ARH SEPP”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 1”.

**[18] Schedule 1, clause 2(1)(q)**

Omit “clause 50(1) of the ARH SEPP”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, clause 45(1)”.

**[19] Schedule 1, clause 2(1)(q)**

Omit “Part 3 of the ARH SEPP”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 3”.

**[20] Schedule 1, clause 2(1A)**

Omit the definitions of *ARH SEPP* and *low-rental dwellings*. Insert instead—

*boarding house* has the same meaning as in the Standard Instrument.

*co-living housing* has the same meaning as in the Standard Instrument.

*low-rental dwellings* has the same meaning as in *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 3.

**[21] Schedule 4 Planning certificates**

Omit clause 15. Insert instead—

**15 Conditions for seniors housing**

If *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 5 applies to the land, a statement setting out terms of a kind referred to in the Policy, clause 88(2) that have been imposed as a condition of development consent granted after 11 October 2007 in relation to the land.

**[22] Schedule 4, clause 17(2)**

Omit the subclause. Insert instead—

- (2) If *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 1 or 5 applies to the land, a statement setting out terms of a kind referred to in the Policy, clause 21(1) or 40(1) that have been imposed as a condition of development consent in relation to the land.