



New South Wales

Environmental Planning and Assessment Amendment (Housing) Regulation 2023

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*.

PAUL SCULLY, MP
Minister for Planning and Public Spaces

Explanatory note

The object of this regulation is to amend the *Environmental Planning and Assessment Regulation 2021* as a consequence of amendments to the *State Environmental Planning Policy (Housing) 2021*, including in relation to design review panels.

This regulation also makes consequential amendments to the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Environmental Planning and Assessment Amendment (Housing) Regulation 2023

under the

Environmental Planning and Assessment Act 1979

1 Name of regulation

This regulation is the *Environmental Planning and Assessment Amendment (Housing) Regulation 2023*.

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 2021

[1] Section 15 Approval of development control plans for residential apartment development

Omit section 15(1)(b)(i). Insert instead—

- (i) advice received from the design review panel about the provisions,

[2] Section 29 Residential apartment development

Omit “design quality principles” wherever occurring in section 29(2)(b)(i) and (3).

Insert instead “design principles for residential apartment development”.

[3] Section 29(4)

Omit “the relevant design review panel”. Insert instead “a design review panel”.

[4] Section 29(4)

Insert at the end of section 29(4)—

Note— See *State Environmental Planning Policy (Housing) 2021*, Chapter 4 in relation to referrals of development applications to design review panels.

[5] Section 35B Embodied emissions for non-residential development under Sustainable Buildings SEPP

Renumber the section as section 35BA.

[6] Section 80 Definitions

Insert in alphabetical order—

Aboriginal Housing Office means the Aboriginal Housing Office constituted by the *Aboriginal Housing Act 1998*.

[7] Section 81 Build-to-rent housing

Omit section 81(2)(b) and (c). Insert instead—

- (b) the tenanted component of the buildings to which the development consent relates must not be subdivided into separate lots, and

[8] Section 81(3), definition of “tenanted component”

Omit “, section 71”.

[9] Section 82 In-fill affordable housing

Omit section 82(1). Insert instead—

- (1) This section applies to development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 1, other than development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.

[10] Section 84 Residential flat buildings—social housing providers, public authorities and joint ventures

Omit section 84(1). Insert instead—

- (1) This section applies to development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 5, other than development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.

[11] Section 102 Modification applications for residential apartment development consents

Omit “design quality principles” wherever occurring in section 102(2)(c)(i) and (3).
Insert instead “design principles for residential apartment development”.

[12] Section 102(4)–(7)

Omit the subsections.

[13] Section 102(8)

Omit “relevant”.

[14] Section 102(8)

Insert at the end of section 102(8)—

Note— See *State Environmental Planning Policy (Housing) 2021*, Chapter 4 in relation to referrals of modification applications to design review panels.

[15] Part 15 Miscellaneous

Insert after Division 4—

Division 4A Design review panels—the Act, s 4.64(1)

288A Constitution of design review panels

- (1) The Minister may constitute a design review panel for—
 - (a) a local government area, or
 - (b) 2 or more local government areas.
- (2) Before constituting a design review panel for a local government area, the Minister must consult with the council for the local government area, including in relation to the members of the panel.
- (3) The Minister may abolish a design review panel at any time and for any reason.
- (4) The Minister may make arrangements with the council for which a design review panel is constituted for the council to provide staff and facilities for the panel.
- (5) Schedule 5A contains provisions relating to the members and procedures of a design review panel.

288B Membership of design review panels

- (1) A design review panel must consist of 3 or more persons appointed by the Minister.
- (2) A person may be appointed as a member of a design review panel only if the person has expertise in architecture, landscape architecture or urban design.
- (3) In appointing members of a design review panel, the Minister must ensure that, as far as practicable, the panel consists of persons with expertise in architecture, landscape architecture and urban design.

- (4) A person may not be appointed as a member of a design review panel if the person is an officer or employee of a council to which the panel gives advice.
- (5) The Minister must appoint a member as chairperson of a design review panel.

288C Advice about design quality of residential apartment development

- (1) The function of a design review panel is to review and give independent advice about the quality of the design of residential apartment development, including by evaluating residential apartment development in accordance with—
 - (a) the design principles for residential apartment development, and
 - (b) the Apartment Design Guide.
- (2) A design review panel may review and give advice on the request of—
 - (a) a consent authority, or
 - (b) a person who has made or proposes to make a development application or modification application.
- (3) A design review panel may review and give advice before or after a development application or modification application for residential apartment development is made.
- (4) A design review panel must give advice to a consent authority within 14 days after receiving a request from the consent authority under subsection (2)(a).
- (5) This section does not apply to State significant development.

288D Other functions of design review panels

- (1) A design review panel may review and give independent advice to a council about provisions of the following that relate to design quality and related matters—
 - (a) an in force or draft local environmental plan or development control plan,
 - (b) an in force or draft master plan or other planning policy document.
- (2) A design review panel may advise a council whether it endorses provisions reviewed under subsection (1).
- (3) A design review panel also has the following functions—
 - (a) to give independent advice to councils on mechanisms and initiatives to improve the implementation of the design principles for residential apartment development,
 - (b) to contribute to the co-ordination of quality of the design of residential apartment development across boundaries of local government areas.
- (4) A design review panel may make public advice given under subsection (1) or (3)(a) for the purposes of improving—
 - (a) the understanding of design quality, and
 - (b) the implementation of the design principles for residential apartment development.

[16] Schedule 5A

Insert after Schedule 5—

Schedule 5A Members and procedures of design review panels

section 288A

1 Term and conditions of office

- (1) A member of a design review panel holds office—
 - (a) for the term determined by the Minister, which must be at least 2 years, and
 - (b) subject to the conditions determined by the Minister.
- (2) A member may be re-appointed.
- (3) A member is entitled to be paid remuneration and expenses determined by the Minister.

2 Alternate members

- (1) The Minister may appoint one or more alternate members for a design review panel.
- (2) An alternate member may act in the place of a member of the design review panel during the absence or illness of the member.
- (3) An alternate member must have expertise in architecture, landscape architecture or urban design.
- (4) An alternate member is not required to have expertise in the same area as the member for whom the alternate member acts.
- (5) While acting in the place of a member, the alternate member has all the functions of the member and is taken to be a member.
- (6) The Minister may remove a person from office as an alternate member at any time.

3 Vacancy in office of member

- (1) The office of a design review panel member becomes vacant if—
 - (a) the design review panel is abolished by the Minister, or
 - (b) the member dies, or
 - (c) the member completes a term of office and is not re-appointed, or
 - (d) the member resigns, or
 - (e) the member is removed from office by the Minister under subsection (2).
- (2) The Minister may remove a member from office at any time.

4 Procedure at meetings

The procedure for the conduct of design review panel meetings is to be determined by the Minister in consultation with the members of the panel, taking into account Part 5 of the Apartment Design Guide.

5 Quorum

The quorum for a design review panel meeting is 3 members of the panel.

6 Presiding member

- (1) The chairperson must preside at a design review panel meeting.
- (2) In the absence of the chairperson, a person elected by the members present at the meeting must preside at the meeting.
- (3) The presiding member has a deliberative vote and, if there is an equality of votes, a second or casting vote.

7 Voting

A decision supported by a majority of the votes cast at a design review panel meeting at which a quorum is present is the decision of the design review panel.

8 Pecuniary interests

- (1) This section applies to a member of a design review panel who has a pecuniary interest in a matter that is the subject of advice by the panel.
- (2) If the member is present at a design review panel meeting at which the matter is being considered, the member—
 - (a) must disclose the interest to the members as soon as practicable, and
 - (b) must not take part in the deliberation of the matter, and
 - (c) must not vote on a question relating to the matter.

- (3) In this section—

pecuniary interest has the same meaning as in the *Local Government Act 1993*, Chapter 14.

9 Existing design review panels

- (1) A design review panel constituted under *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* that existed immediately before the commencement of this schedule is taken, on the commencement of this schedule, to be a design review panel constituted by the Minister under this regulation.
- (2) The quorum specified in this schedule, section 5 does not apply to a design review panel referred to in subsection (1) for 6 months following the commencement of this schedule.

[17] Schedule 7 Dictionary

Omit the definitions of *Apartment Design Guide*, *design quality principles*, *design review panel* and *relevant design review panel* and *residential apartment development*.

Insert in alphabetical order—

Affordable Housing Guidelines, for Part 4, Division 2, Subdivision 2—see section 80.

Apartment Design Guide means the *Apartment Design Guide* published by the Department in July 2015.

application, for Schedule 4, Part 5—see Schedule 4, Part 5, section 2.

design principles for residential apartment development has the same meaning as in *State Environmental Planning Policy (Housing) 2021*.

design review panel means a panel constituted by the Minister under section 288A.

Land and Housing Corporation, for Part 4, Division 2, Subdivision 2—see section 80.

minor subdivision, for Schedule 4, Part 5—see Schedule 4, Part 5, section 2.

moored vessel, for Schedule 4, Part 5—see Schedule 4, Part 5, section 2.

registered community housing provider, for Part 4, Division 2, Subdivision 2—see section 80.

Registrar of Community Housing, for Part 4, Division 2, Subdivision 2—see section 80.

residential apartment development has the same meaning as in *State Environmental Planning Policy (Housing) 2021*.

vessel, for Schedule 4, Part 5—see Schedule 4, Part 5, section 2.

Schedule 2 Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

[1] Sections 15(2) and (3) and 43(3) and (4), definition of “design statement”

Omit “design quality principles” wherever occurring.

Insert instead “design principles for residential apartment development”.

[2] Schedule 2 Dictionary

Omit the definitions of *design quality principles* and *residential apartment development*.

Insert in alphabetical order—

design principles for residential apartment development has the same meaning as in *State Environmental Planning Policy (Housing) 2021*.

residential apartment development has the same meaning as in *State Environmental Planning Policy (Housing) 2021*.