

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (2002 EPI 530)

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New South Wales

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The provisions displayed in this version of the legislation have all commenced.

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New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning.

ANDREW REFSHAUGE, M.P., Minister for Planning

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

2 Aims, objectives etc

- (1) This Policy aims to improve the design quality of residential flat development in New South Wales.
- (2) This Policy recognises that the design quality of residential flat development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.
- (3) Improving the design quality of residential flat development aims:
 - (a) to ensure that it contributes to the sustainable development of New South Wales:
 - (i) by providing sustainable housing in social and environmental terms, and
 - (ii) by being a long-term asset to its neighbourhood, and
 - (iii) by achieving the urban planning policies for its regional and local contexts, and
 - (b) to achieve better built form and aesthetics of buildings and of the streetscapes

and the public spaces they define, and

- (c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and
- (d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and
- (e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.

(4) This Policy aims to provide:

- (a) consistency of policy and mechanisms across the State, and
- (b) a framework for local and regional planning to achieve identified outcomes for specific places.

3 Definitions

(1) In this Policy:

design quality principles means the design quality principles set out in Part 2.

design review panel means a panel constituted under Part 3.

master plan has the same meaning as in clause 92A of the *Environmental Planning and Assessment Regulation 2000*.

residential flat building means 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
- (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*.

Note—

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.

residential flat development means development to which this Policy applies because of clause 4.

the Act means the *Environmental Planning and Assessment Act 1979*.

(2) Notes in this Policy do not form part of it.

4 Application of Policy

- (1) This Policy applies to 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.
- (2) If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.

5 Land to which this Policy applies

This Policy applies to the whole of the State.

6 Relationship with other environmental planning instruments

In the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.

Part 2 Design quality principles

7 Design quality principles

The design quality principles for residential flat development are the principles set out in this Part.

8 Introduction to the principles

Good design is a creative process which, when applied to towns and cities, results in the development of great urban places: buildings, streets, squares and parks.

Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas.

Good design serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges.

The design quality principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions.

9 Principle 1: Context

Good design responds and contributes to its context. Context can be defined as the key

natural and built features of an area.

Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

10 Principle 2: Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

11 Principle 3: Built form

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

12 Principle 4: Density

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

13 Principle 5: Resource, energy and water efficiency

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

14 Principle 6: Landscape

Good design recognises that together landscape and buildings operate as an integrated

and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.

15 Principle 7: Amenity

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

16 Principle 8: Safety and security

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

17 Principle 9: Social dimensions

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

18 Principle 10: Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to

desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

Part 3 Design review panels

Division 1 Appointment

19 Constitution of panels

- (1) The Minister may constitute one or more design review panels.
- (2) An existing body established for the purpose of advising on design may be constituted as a design review panel even though its membership may not satisfy the requirements of clause 21 (subclause (5) excepted).
- (3) A design review panel may be constituted for a region or for one or more local government areas.
- (4) More than one design review panel may be constituted in relation to the same region or the same local government area.

20 Requirement for consultation

- (1) The Minister, before constituting a design review panel for a region or for one or more local government areas (including by the constitution of an existing body), must consult with the relevant councils or council to ascertain whether they wish, or it wishes, a design review panel to be constituted.
- (2) The Minister must also consult with the relevant council or councils on the proposed membership (including an alternate member) of a design review panel.

21 Members of panels

- (1) A design review panel is to consist of not more than 5 persons appointed by the Minister.
- (2) A person is qualified for appointment as a member of a design review panel if the person has expertise in any one or more of the following disciplines, namely, architecture, urban design, environmental planning or landscape architecture.
- (3) At least one member of each design review panel must have an appreciation of the design issues of the region or area for which the panel is constituted.
- (4) In appointing the members of a design review panel, the Minister is to ensure, as far as practicable, that the members have expertise in a mix of the disciplines referred to in subclause (2).
- (5) A person is not qualified for appointment as a member of a design review panel if the

person is an officer or employee of a consent authority that is advised by the panel.

Note—

An officer of a consent authority includes a councillor of a council.

22 Alternate member

- (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 any member of the design review panel who for any reason is unable to act as a member.
- (3) An alternate member must have one of the qualifications referred to in clause 21 (2) and is not required to have the same qualification as the member in whose place the alternate member acts.
- (4) The provisions of clauses 21 (5), 23 and 24 apply to an alternate member in the same way as those provisions apply to a member.

23 Term and other conditions of office

A member of a design review panel:

- (a) holds office for such term as is determined by the Minister, and
- (b) ceases to hold office in such circumstances as are determined by the Minister, and
- (c) is entitled to such remuneration, if any, and to the payment of such expenses, if any, as are determined by the Minister, and
- (d) holds office subject to such conditions as are determined by the Minister.

24 Pecuniary interests

A member of a design review panel who has a pecuniary interest (within the meaning of sections 442 and 443 of the *Local Government Act 1993*) in any matter that is the subject of advice by the panel and who is present at a meeting of the panel at which the matter is being considered:

- (a) must disclose the interest to the meeting as soon as practicable, and
- (b) must not take part in the consideration or discussion of the matter, and
- (c) must not vote on any question relating to the matter.

25 Procedure at meetings

Subject to clause 26, the procedure at meetings of a design review panel is to be determined by the Minister or, in the absence of any such determination, by the panel.

26 Quorum

The quorum at a meeting of a design review panel is a majority of the members for the time being of the panel.

Division 2 Functions

27 Functions of panels

(1) The functions of a design review panel are as follows:

- (a) to give specific independent design advice to the consent authority on a development application for residential flat development and, in particular, to give such advice on the design quality of the residential flat development when evaluated in accordance with the design quality principles,
- (b) to provide independent advice to consent authorities and applicants, and their consultants and advisers, before the lodging of relevant development applications as well as afterwards, on the design quality of residential flat development proposals having regard to the design quality principles,
- (c) to give independent advice to councils on the design content of draft local environmental plans, development control plans, master plans, similar plans and draft planning policy documents having regard to the design quality principles,
- (d) to give independent advice to councils on other mechanisms and initiatives to improve achievement of the design quality principles,
- (e) to contribute to the understanding of design quality, and to improve the achievement of the design quality principles, by making public its advice under paragraphs (a) and (c),
- (f) to contribute to the co-ordination of design quality across boundaries of local government areas.

(2) A design review panel may:

- (a) carry out a review of provisions relating to the design quality of residential flat development in any local environmental plans and development control plans in the area or region for which it is constituted, and
- (b) advise the relevant council or councils whether or not it endorses those provisions.

Part 4 Application of design quality principles

28 Preparation of instruments

A person who prepares:

- (a) an environmental planning instrument, or
- (b) a development control plan, or
- (c) a master plan or similar plan,

that makes provision with respect to residential flat development should include provisions in the instrument or plan to ensure the achievement of design quality in accordance with the design quality principles.

Approval of development control plans

Note—

The *Environmental Planning and Assessment Regulation 2000* contains the following provision:

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.

29 Making or adoption of master plans

A person who, under the provisions of any other environmental planning instrument, is authorised to make or adopt a master plan, being a master plan that contains provisions that relate to the design quality of residential flat development, must not make or adopt the master plan unless the person:

- (a) has referred the draft master plan to the design review panel (if any) constituted for the relevant area or region, and
- (b) has taken into consideration any comments made by the design review panel.

Development applications

Note—

The *Environmental Planning and Assessment Regulation 2000* contains the following provision in clause 50 (How must a development application be made?):

- (1A) A development application that relates to 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.

Clause 3 of the *Environmental Planning and Assessment Regulation 2000* contains the following definition:

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

Also, the form for making a development application as referred to in Schedule 1 to the *Environmental Planning and Assessment Regulation 2000* provides:

- (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:
 - (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.

30 Determination of development applications

- (1) After receipt of a development application for consent to carry out residential flat development and before it determines the application, the consent authority is to obtain the advice of the relevant design review panel (if any) concerning the design quality of the residential flat development.
- (2) In determining a development application for consent to carry out residential flat development, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained in accordance with subclause (1), and
 - (b) the design quality of the residential flat development when evaluated in accordance with the design quality principles, and
 - (c) the publication *Better Urban Living Guidelines for Urban Housing in NSW* (Department of Urban Affairs and Planning and NSW Government Architect 1998), unless:
 - (i) if a development control plan applies to the residential flat development, the development control plan has been endorsed under clause 27 (2) by the relevant design review panel or has been approved in accordance with clause 21A of the *Environmental Planning and Assessment Regulation 2000*, or
 - (ii) if a master plan applies to the residential flat development, the master plan has been made or adopted in accordance with clause 29.
- (3) However, if the relevant design review panel fails to inform the consent authority of its advice concerning the design quality of the residential flat development within 31 days after the request for its advice is made by the consent authority, the consent authority may determine the development application without considering any such advice and a development consent so granted is not voidable on that ground.
- (4) The 31-day period referred to in subclause (3) does not increase or otherwise affect the period within which a development application is required to be determined by a consent authority.

Modification of consents

Note—

The *Environmental Planning and Assessment Regulation 2000* contains the following provision in clause 115 (What are the requirements for an application for modification of a development consent?):

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

Issue of construction certificates

Note—

The *Environmental Planning and Assessment Regulation 2000* contains the following provisions:

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*.

Issue of occupation certificates

Note—

The *Environmental Planning and Assessment Regulation 2000* contains the following provision:

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 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 Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

Part 5 Miscellaneous

31 Transitional provisions

- (1) The provisions of clause 28 extend to an environmental planning instrument, development control plan or master plan the preparation of which commenced before the commencement of this Policy.
- (2) The provisions of clause 29 extend to an environmental planning instrument, development control plan or master plan the preparation of which commenced before the constitution of a design review panel for the relevant area or region.
- (3) The provisions of clause 30 (2) extend (but the provisions of clause 30 (1) do not extend) to the determination of a development application for consent to carry out residential flat development that has been made, but not finally determined, before the date of commencement of this Policy.

- (4) Nothing in subclause (3) prevents a consent authority from obtaining the advice of the relevant design review panel (if any) concerning the design quality of residential flat development after receipt of a development application for consent to carry out the development and before it determines the application.