

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

[2002-530]



New South Wales

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Provisions in force

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

Notes—

- **Previously named**
State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

Part 1 Preliminary

1 Name of Policy

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

2 Aims, objectives etc

- (1) This Policy aims to improve the design quality of residential apartment development in New South Wales.
- (2) This Policy recognises that the design quality of residential apartment 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 apartment 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, and
- (f) to contribute to the provision of a variety of dwelling types to meet population growth, and
- (g) to support housing affordability, and
- (h) to facilitate the timely and efficient assessment of applications for development to which this Policy applies.

(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—

Apartment Design Guide means the document titled “*Apartment Design Guide*” published by the Department of Planning and Environment on the day on which [State Environmental Planning Policy No 65—Design Quality of Residential Flat Development \(Amendment No 3\)](#) commences.

Note—

A copy of the Guide is available on the website of the Department.

design quality principles means the principles set out in Schedule 1.

design review panel means a panel constituted under Part 3.

relevant design review panel, in relation to an application for development consent or the modification of development consent, means the design review panel for the local government area or areas in which the development concerned is being (or is proposed to be) carried out.

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

the Act means the [Environmental Planning and Assessment Act 1979](#).

(2) Words and expressions used in this Policy have the same meaning as they have in the standard local environmental planning instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#), unless otherwise defined in this Policy.

- (3) Notes included in this Policy do not form part of this Policy.

4 Application of Policy

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if—
- (a) the development consists of any of the following—
- (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.
- (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.
- (3) To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the *Building Code of Australia*.
- (4) Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house, co-living housing or a serviced apartment to which that plan applies.

5 Land to which this Policy applies

- (1) This Policy applies to the whole of the State.
- (2) Despite subclause (1), this Policy does not apply to land to which [*State Environmental Planning Policy \(Kosciuszko National Park—Alpine Resorts\) 2007*](#) applies.

6 Relationship with other environmental planning instruments

- (1) 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.
- (2) Subclause (1) does not apply in relation to [*State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004*](#).

6A Development control plans cannot be inconsistent with Apartment Design Guide

- (1) This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following—
 - (a) visual privacy,
 - (b) solar and daylight access,
 - (c) common circulation and spaces,
 - (d) apartment size and layout,
 - (e) ceiling heights,
 - (f) private open space and balconies,
 - (g) natural ventilation,
 - (h) storage.
- (2) If a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.
- (3) This clause applies regardless of when the development control plan was made.

Part 2

7-18 (Repealed)

Part 3 Design review panels

Division 1 Appointment

19 Constitution of panels

- (1) The Minister may constitute a design review panel for—
 - (a) a particular local government area, or
 - (b) 2 or more local government areas.
- (2) The Minister may abolish a design review panel at any time and for any reason.
- (3) The Minister may make arrangements with the council or councils for the area or areas for which a design review panel is constituted for the provision by them of staff and facilities for the panel.

20 Requirement for consultation

- (1) The Minister, before constituting a design review panel for one or more local government areas, 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 Membership of panels

- (1) A design review panel is to consist of 3 or more persons appointed by the Minister, one of whom is to be appointed as chairperson of the panel.
- (2) A person is qualified for appointment as a member of a design review panel if the person has expertise in architecture, landscape architecture or urban design.
- (3) 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.

- (4) In appointing members of a design review panel, the Minister is to ensure that, as far as practicable, the panel will have a mix of expertise in the disciplines referred to in subclause (2).

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 (being a term of at least 2 years), and
- (b) ceases to hold office in any of the following circumstances—

- (i) if the panel is abolished by the Minister, or
 - (ii) if the member's term of office expires and the member is not re-appointed, or
 - (iii) if the member dies or resigns, or
 - (iv) in such other circumstances as the Minister determines, 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 in consultation with the members of the panel having regard to Part 5 of the Apartment Design Guide.

26 Quorum

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

26A Presiding member

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

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 development to which this Policy applies or an application for the modification of development consent for such development and, in particular, to give such advice on the design quality of the development to which this Policy applies (or modifications) when evaluated in accordance with the design quality principles and the Apartment Design Guide,

- (b) to provide independent advice to consent authorities and applicants, and their consultants and advisers, before the lodging of relevant development applications or applications for the modification of development consents as well as afterwards, on the design quality of development to which this Policy applies 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 development to which this Policy applies in any local environmental plans and development control plans in the area or areas 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 principles

Note—

The *Environmental Planning and Assessment Regulation 2000* also contains provisions dealing with the application of the design quality principles and the Apartment Design Guide in connection with development to which this Policy applies. See, for example, clauses 21A, 50, 115, 143A and 154A.

28 Determination of development applications

- (1) After receipt of a development application for consent to carry out development to which this Policy applies (other than State significant development) and before it determines the application, the consent authority is to refer the application to the relevant design review panel (if any) for advice concerning the design quality of the

development.

- (2) In determining a development application for consent to carry out development to which this Policy applies, 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 from the design review panel, and
 - (b) the design quality of the development when evaluated in accordance with the design quality principles, and
 - (c) the Apartment Design Guide.
- (3) However, if the relevant design review panel fails to inform the consent authority of its advice concerning the design quality of the development to which this Policy applies within 14 days after its first meeting to deal with the application concerned, 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 14-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.
- (5) A consent authority is not required to obtain the advice of a relevant design review panel under subclause (1) if an architectural design competition that is consistent with the Design Excellence Guidelines has been held in relation to the proposed development.
- (6) In this clause—

architectural design competition means a competitive process conducted in accordance with the Design Excellence Guidelines.

Design Excellence Guidelines means the Design Excellence Guidelines issued by the Director-General in October 2010.

Note—

A copy of the Guidelines is available on the website of the Department.

29 Determination of applications for development consent modifications

- (1) This clause applies if a consent authority is required by clause 115(3B) of the [*Environmental Planning and Assessment Regulation 2000*](#) to refer an application for the modification of development consent (other than in relation to State significant development) to a relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.

- (2) In determining an application to which this clause applies, the 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 from the design review panel, and
 - (b) the design quality of the development (as modified) when evaluated in accordance with the design quality principles, and
 - (c) the Apartment Design Guide.
- (3) However, if the relevant design review panel fails to inform the consent authority of its advice within 14 days after its first meeting to deal with the application concerned, the consent authority may determine the application without considering any such advice and a modification of consent so granted is not voidable on that ground.
- (4) The 14-day period referred to in subclause (3) does not increase or otherwise affect the period within which an application for the modification of development consent is required to be determined by a consent authority.

30 Standards that cannot be used as grounds to refuse development consent or modification of development consent

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters—
 - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
 - (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
 - (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note—

The *Building Code of Australia* specifies minimum ceiling heights for residential flat buildings.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to—
 - (a) the design quality principles, and

(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt—

(a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and

(b) the design criteria specified in subclause (1) are standards to which section 4.15(2) of the Act applies.

Note—

The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

30A (Repealed)

Part 5 Miscellaneous

31 Transitional provisions for *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3)*

- (1) Each design review panel (if any) in existence immediately before the commencement of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3)* is abolished on that commencement.
- (2) If a development application or an application for the modification of a development consent has been made before the notification on the NSW legislation website of the making of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3)* and the application has not been finally determined before the commencement of that amendment, the application must be determined as if the amendment had not commenced.
- (3) If a development application or an application for the modification of a development consent has been made after the notification on the NSW legislation website of the making of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3)* and the application has not been finally determined before the commencement of that amendment, the application must be determined under this Policy as amended by that amendment.

32 Effect of Amendment No 1

The amendments made to this Policy by *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 1)* do not apply to a development application made but not finally determined before the commencement of those amendments.

33 Review of Policy

The Minister must ensure that the provisions of this Policy are reviewed at least every 5 years after the commencement of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3)*.

Schedule 1 Design quality principles

(Clause 3(1), definition of “design quality principles”)

Principle 1: Context and neighbourhood character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area’s existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Principle 2: Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building’s purpose in terms of building alignments, proportions, building type, articulation 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.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area’s existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Principle 8: Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.