



New South Wales

# Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015

under the

Environmental Planning and Assessment Act 1979

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

ROBERT STOKES, MP  
Minister for Planning

## Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000*:

- (a) to provide for the referral of certain applications for the modification of development consent for residential apartment development to a design review panel constituted under *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (as amended by *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3)*), and
- (b) to make other amendments that are consequential on the amendments made by *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3)*, and
- (c) to provide for a \$3,000 maximum additional fee (increased from \$760) for residential apartment development involving an application for development consent, or an application for the modification of the development consent, that is referred to a design review panel.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 105, 137 and 157 (the general regulation-making power).

## **Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015**

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### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015*.

### **2 Commencement**

This Regulation commences 4 weeks after 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 *residential flat development*.

### [2] Clause 3

Insert the following definitions in alphabetical order in clause 3 (1):

*Apartment Design Guide* has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

*design quality principles* has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

*design review panel* has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

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

### [3] Clause 21A

Omit the clause. Insert instead:

#### 21A Approval of development control plans relating to residential apartment development

- (1) The council must not approve a draft development control plan (including an amending plan) containing provisions that apply to residential apartment 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 local government area (or for 2 or more local government areas that include the council's area), and
  - (b) has taken into consideration:
    - (i) any comments made by the design review panel concerning those provisions, and
    - (ii) the matters specified in Parts 1 and 2 of the *Apartment Design Guide*.
- (2) This clause extends to a plan the preparation of which commenced before the constitution of the design review panel.

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

Omit clause 50 (1A). Insert instead:

- (1A) If a development application that relates to residential apartment development is made on or after the commencement of the *Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015*, the application must be accompanied by a statement by a qualified designer.
- (1AB) The statement by the qualified designer must:
  - (a) verify that he or she designed, or directed the design, of the development, and

- (b) provide an explanation that verifies how the development:
  - (i) addresses how the design quality principles are achieved, and
  - (ii) demonstrates, in terms of the *Apartment Design Guide*, how the objectives in Parts 3 and 4 of that guide have been achieved.

**[5] Clause 70B Staged development applications—residential apartment development**

Omit “—residential flat development” from the heading.

Insert instead “—residential apartment development”.

**[6] Clause 115 Application for modification of development consent**

Omit clause 115 (3). Insert instead:

- (3) In addition, if an application for the modification of a development consent under section 96 (2) or section 96AA (1) of the Act relates to residential apartment development and the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), the application must be accompanied by a statement by a qualified designer.
  - (3A) The statement by the qualified designer must:
    - (a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and
    - (b) provide an explanation of how:
      - (i) the design quality principles are addressed in the development, and
      - (ii) in terms of the *Apartment Design Guide*, the objectives of that guide have been achieved in the development, and
    - (c) verify that 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.
  - (3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the 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.

**[7] Clause 143A**

Omit the clause. Insert instead:

**143A Special requirements for construction certificates for residential apartment development**

- (1) This clause applies to residential apartment development for which the development application was required to be accompanied by a statement by a qualified designer under clause 50 (1A).
- (2) A certifying authority must not issue a construction certificate for the development unless the certifying authority has received the statement by the qualified designer verifying 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.

- (3) If the development application referred to in subclause (1) was also required to be accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in subclause (2) need not be verified to the extent to which they aim:
  - (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
  - (b) to improve the thermal performance of the building.

**[8] Clause 154A**

Omit the clause. Insert instead:

**154A Special requirements for occupation certificates for residential apartment development**

- (1) This clause applies to residential apartment development for which the development application was required to be accompanied by a statement by 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 the development unless the certifying authority has received the statement by the qualified designer verifying 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.
- (3) If the development application referred to in subclause (1) was also required to be accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in subclause (2) need not be verified to the extent to which they aim:
  - (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
  - (b) to improve the thermal performance of the building.

**[9] Clause 248**

Omit the clause. Insert instead:

**248 Additional fee—residential apartment development**

An additional fee, not exceeding \$3,000, is payable for development involving an application for development consent, or an application for the modification of the development consent, that is referred to a design review panel for advice.

**[10] Schedule 1 Forms**

Omit “relates to residential flat development to which *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*” from clause 2 (5).

Insert instead “relates to residential apartment development to which *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*”.

**[11] Schedule 1**

Omit clause 2 (5) (a). Insert instead:

- (a) an explanation of how:
  - (i) the design quality principles are addressed in the development,  
and
  - (ii) in terms of the *Apartment Design Guide*, the objectives of that  
guide have been achieved in the development,