



New South Wales

# **Environmental Planning and Assessment Amendment (Design and Place) 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*.

Minister for Planning and Public Spaces

## **Explanatory note**

The object of this Regulation is to make amendments related to the making of the *State Environmental Planning Policy (Design and Place) 2021*.

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]

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## **Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Regulation**

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

### **2 Commencement**

This Regulation commences on the [insert date 6 months after publication] and is required to be published on the NSW legislation website.

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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

**Consultation note—** This Schedule includes amendments to the *Environmental Planning and Assessment Regulation 2000* as in force in December 2021. Some provisions of the Regulation will be omitted and instead included in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, which commences on 1 January 2022.

### [1] Clause 3 Definitions

Omit the definitions of *Apartment Design Guide*, *design quality principles*, *design review panel* and *residential apartment development* from clause 3(1).

Insert instead in alphabetical order—

***Apartment Design Guide*** has the same meaning as in *State Environmental Planning Policy (Design and Place) 2021*.

***architect*** means a design practitioner registered under the *Design and Building Practitioners Act 2020* in the design practitioner—architectural class.

***design considerations*** has the same meaning as in *State Environmental Planning Policy (Design and Place) 2021*.

***design principles*** has the same meaning as in *State Environmental Planning Policy (Design and Place) 2021*.

***design review panel*** means—

- (a) the design review panel constituted by the Minister under Part 16B for the local government area in which the development will be carried out, or
- (b) if a design review panel has not been constituted for the local government area in which the development will be carried out—the State design review panel.

***design verification statement***—see clause 57.

***green infrastructure*** has the same meaning as in *State Environmental Planning Policy (Design and Place) 2021*.

***landscape architect*** means—

- (a) a registered landscape architect member of the Australian Institute of Landscape Architects, or
- (b) a person with at least 8 years' experience in landscape design.

***Local Government Design Review Panel Manual*** means the Local Government Design Review Panel Manual published on the NSW planning portal as in force from time to time.

***non-residential development*** has the same meaning as in *State Environmental Planning Policy (Design and Place) 2021*.

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

***State design review panel***—see clause 268B.

***urban design development*** has the same meaning as in *State Environmental Planning Policy (Design and Place) 2021*.

***Urban Design Guide*** has the same meaning as in *State Environmental Planning Policy (Design and Place) 2021*.

***urban designer*** means the following—

- (a) a qualified town planner with at least 5 years' experience in precinct or master planning,

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# public consultation draft

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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- (b) a landscape architect with at least 5 years' experience in precinct or master planning,
- (c) an architect with at least 5 years' experience in precinct or master planning.

**[2] Clause 16, heading**

Omit the heading. Insert instead—

**16 Content of development control plan**

**[3] Clause 16(3)**

Insert after clause 16(2)—

- (3) In preparing a development control plan, the council must consider—
  - (a) the design principles and design considerations specified in the *State Environmental Planning Policy (Design and Place) 2021*, and
  - (b) the Urban Design Guide.

**[4] Clause 21A Approval of development control plans relating to residential apartment department**

Omit “(if any) constituted for the council’s local government area (or for 2 or more local government areas that include the council’s area)” from clause 21A(1)(a).

**[5] Clause 21A(1)(b)(ii)**

Omit “the matters specified in Parts 1 and 2 of”.

**[6] Clause 50 How must a development application be made?**

Insert after clause 50(1AA)—

**Note**— See Division 1A for other information and documents required to accompany certain development applications.

**[7] Clause 50(1A), (1AB) and (1B)**

Omit the subclauses.

**[8] Part 6, Division 1A**

Insert after clause 56B—

**Division 1A Documents and information to accompany development applications**

**57 Design verification statement**

- (1) A development application for the following development must be accompanied by a ***design verification statement***—
  - (a) residential apartment development,
  - (b) urban design development,
  - (c) development involving public or common space of more than 1,000 square metres.
- (2) A design verification statement for development specified in subclause (1)(a) must—
  - (a) be prepared by an architect, and

# public consultation draft

Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- (b) verify that the architect designed, or directed the design of, the development, and
- (c) explain, by reference to the Apartment Design Guide, how the development achieves the objectives of the Guide.

(3) A design verification statement for development specified in subclause (1)(b) must—

- (a) be prepared by an urban designer, and
- (b) verify that the urban designer designed, or directed the design of, the development, and
- (c) explain, by reference to the Urban Design Guide, how the development achieves the objectives of the Guide, and
- (d) for urban design development that is State significant development—explain the following—
  - (i) the involvement of Aboriginal stakeholders in the design of the development,
  - (ii) how the development incorporates the intellectual property of the local Indigenous communities.

(4) A design verification statement for development specified in subclause (1)(c) must—

- (a) be prepared by a landscape architect, and
- (b) verify that the landscape architect designed, or directed the design of, the development, and
- (c) explain, by reference to the Urban Design Guide, how the development achieves the objectives of the Guide.

(5) This clause requires more than 1 design verification statement for the same development application if the development application relates to more than 1 type of development specified in this clause.

## 57A Additional requirements for design verification statements

(1) If the development application relates to development that requires review by a design review panel under *State Environmental Planning Policy (Design and Place) 2021*, section 35, the design verification statement must also—

- (a) verify that the design of the development incorporates the design review panel's advice,
- (b) explain how the development is consistent with the design review panel's advice,
- (c) explain how the development otherwise satisfies the design principles and design considerations set out in the *State Environmental Planning Policy (Design and Place) 2021* in relation to any part of the development that is not consistent with the design review panel's advice.

(2) If the development application is also required to be accompanied by a BASIX certificate for a building, the design verification statement does not need to address the design principles and design considerations to the extent to which they aim—

- (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, or
- (b) to improve the thermal performance of the building.

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# public consultation draft

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

## 57B Design review report

- (1) This clause applies to a development application for development that requires review by a design review panel under *State Environmental Planning Policy (Design and Place) 2021*, section 35.
- (2) A development application must include a report that explains how the development—
  - (a) incorporates the advice from the design review panel, and
  - (b) is consistent with the design review panel's advice, and
  - (c) otherwise satisfies the design principles and design considerations set out in the *State Environmental Planning Policy (Design and Place) 2021* in relation to any part of the development that is not consistent with the design review panel's advice.
- (3) This clause does not apply if the development application must be accompanied by a design verification statement under clause 57.

## 57C Embodied energy

- (1) A development application for development to which *State Environmental Planning Policy (Design and Place) 2021* applies must—
  - (a) disclose the amount of embodied emissions attributable to the development, using the calculator published on the NSW planning portal as in force from time to time,
  - (b) describe the use of low-emission construction technologies in the development.
- (2) This clause does not apply to BASIX affected development.
- (3) In this clause—  
*embodied emissions* has the same meaning as in *State Environmental Planning Policy (Design and Place) 2021*, Schedule 2, section 5.

## 57D Net zero statement

- (1) A development application for development to which *State Environmental Planning Policy (Design and Place) 2021* applies must include the following information (a **net zero statement**)—
  - (a) the estimated annual energy consumption for the building in kilowatt hours per square metre of floor area,
  - (b) the estimated amount of emissions from the building, including direct and indirect emissions,
  - (c) evidence that the development incorporates the infrastructure and space that is necessary for the building to achieve net zero emissions by 1 January 2035,
  - (d) details of how data about the emissions of the building will be able to be recorded and reported,
  - (e) for prescribed non-residential development—evidence that the non-renewable energy used by the building will be offset by the surrender of renewable energy certificates equivalent to 1 megawatt hour of renewable energy generation over 5 years.
- (2) This clause does not apply to BASIX affected development.
- (3) In this clause—

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# public consultation draft

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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***prescribed non-residential development*** means non-residential development that is—

- (a) State significant development, or
- (b) carried out on land in the Greater Sydney Region.

**[9] Clause 99**

Insert after clause 98F in Division 8A—

**99 Condition relating to charging facilities for electric vehicles**

- (1) It is a condition of a development consent for development that includes a car park that—
  - (a) an electricity supply distribution board is installed on each storey of the car park, and
  - (b) the electricity supply distribution board is capable of being used to charge electric vehicles, and
  - (c) the electricity supply board is clearly marked as capable of being used to charge electric vehicles.
- (2) Subclause (1) does not apply to development involving—
  - (a) a class 1, 4, 7a or 10 building, or
  - (b) a class 3 building that is not hotel or motel accommodation.
- (3) It is a condition of the development consent for development involving a class 2 or 9c building that—
  - (a) all car parking spaces provided for residents, visitors and staff are capable of supplying 12 kilowatt hours of electricity to charge electric cars for each car parking space between 11pm and 7am every day, and
  - (b) a facility to charge electric vehicles is installed in at least 10% of all car parking spaces provided for visitors, or in 1 car parking space if there are fewer than 10 car parking spaces provided for visitors, and
  - (c) storage for electrical cables must be capable of being installed within 5 metres of each car parking space provided for residents, visitors and staff.
- (4) It is a condition of the development consent for development involving a class 3 building that is hotel or motel accommodation that at least 25% of all car parking spaces are capable of supplying 48 kilowatt hours of electricity to charge electric cars for each car parking space between 11pm and 7am every day.
- (5) It is a condition of the development consent for development involving a class 5 or 6 building that at least 10% of all car parking spaces are capable of supplying 12 kilowatt hours of electricity to charge electric cars for each car parking space between 9am and 5pm every day.
- (6) It is a condition of the development consent for development involving a class 7b, 8, 9a or 9b building that at least 20% of all car parking spaces are capable of supplying 12 kilowatt hours of electricity to charge electric cars for each car parking space between 9am and 5pm every day.
- (7) It is a condition of the development consent for development involving a 2, 5, 6, 7b, 8, 9a, 9b or 9c building that the development must provide—
  - (a) facilities for charging electric vehicles other than cars, such as scooters, electric bicycles and heavy vehicles, and

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# public consultation draft

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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- (b) at least one 10A outlet for every 4 bicycle parking spaces.

**99A Condition relating to green travel plan**

- (1) This clause applies to development to which *State Environmental Planning Policy (Design and Place) 2021*, section 33 applies if a green travel plan was prepared in accordance with that section.
- (2) It is a condition of the development consent that the green travel plan is—
  - (a) reviewed every 2 years, and
  - (b) implemented in a way that ensures the targets for mode share specified in the green travel plan are achieved.

**[10] Clause 115 Application for modification of development consent except for State significant development**

Omit clause 115(3)–(5).

**[11] Clause 115, note**

Insert at the end of clause 115—

**Note**— See clause 116 for other documents required to accompany certain modification applications.

**[12] Clause 116**

Insert after clause 115A—

**116 Design verification statement to accompany certain modification applications**

- (1) This clause applies to an application for the modification of a development consent under the Act, section 4.55(2) or section 4.56(1) if the original development application was required to be accompanied by a design verification statement under clause 57.
- (2) The modification application must be accompanied by a design verification statement.
- (3) Clause 57 applies to the design verification statement required to accompany the modification application under this clause in the same way as it applies to a development application.
- (4) If the modification application relates to development that required review by a design review panel under *State Environmental Planning Policy (Design and Place) 2021*, section 35 in relation to the original development application, the design verification statement must also—
  - (a) verify that the design of the development incorporates the design review panel's advice, and
  - (b) explain how the development is consistent with the design review panel's advice, and
  - (c) explain how the development otherwise satisfies the design principles and design considerations set out in *State Environmental Planning Policy (Design and Place) 2021* in relation to any part of the development that is not consistent with the design review panel's advice.
- (5) This clause does not apply to State significant development to which *State Environmental Planning Policy (Design and Place) 2021* does not apply.

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# public consultation draft

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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## [13] Clause 143A

Omit the clause. Insert instead—

### 143A Design verification requirements

- (1) This clause applies to development for which the development application was required to be accompanied by a design verification statement under clause 57.
- (2) A certifier must not issue a construction certificate for the development unless the certifier has received the design verification statement.

## [14] Clauses 154A, 154AA, 154AB and 154AC

Omit clause 154A. Insert instead—

### 154A Design verification requirements

- (1) This clause applies to development for which the development application was required to be accompanied by a design verification statement under clause 57.
- (2) A certifier must not issue an occupation certificate to authorise a person to commence occupation or use of a building unless the certifier has received the design verification statement.

### 154AA Sustainability requirements for certain non-residential development

- (1) This clause applies to prescribed non-residential development to which clause 57D applies.
- (2) A certifier must not issue an occupation certificate to authorise a person to commence occupation or use of a building unless the certifier is satisfied of the following—
  - (a) the building is capable of achieving the standards for energy and water use specified in *State Environmental Planning Policy (Design and Place) 2021*, Schedule 1,
  - (b) the building incorporates measures to achieve net zero emissions by 1 January 2035, and
  - (c) the non-renewable energy used by the building will be offset by the surrender of renewable energy certificates equivalent to 1 megawatt hour of renewable energy generation over 5 years, as referred to in clause 57D(1)(e).

### 154AB Green travel plan requirements for certain development

- (1) This clause applies to development to which *State Environmental Planning Policy (Design and Place) 2021*, section 33 applies if a green travel plan was prepared in accordance with that section.
- (2) A certifier must not issue an occupation certificate to authorise a person to commence occupation or use of a building unless the certifier is satisfied the building is capable of implementing the measures and meeting the mode share targets specified in the green travel plan.

### 154AC Requirements for charging facilities for electric vehicles

- (1) This clause applies to development to which clause 99 applies.
- (2) A certifier must not issue an occupation certificate to authorise a person to commence occupation or use of a building unless the certifier is satisfied that the requirements in clause 99 that apply to the building have been complied with.

# public consultation draft

Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

## [15] Clause 164A BASIX certificates

Insert after clause 164A(2)—

- (2A) The Planning Secretary may approve other arrangements under which the sustainability of proposed development may be assessed.
- (2B) The arrangements may provide for—
  - (a) a qualified person to issue an assessment of the sustainability of proposed development, and
  - (b) the assessment to be treated as a BASIX certificate for the purposes of this Regulation.

## [16] Clause 164A(4)(c)

Omit “meet the Government’s requirements for sustainability”.

Insert instead “comply with *State Environmental Planning Policy (Design and Place) 2021*, Part 3, Division 2”.

## [17] Clause 164A(5)

Insert in alphabetical order—

**qualified person** means the following—

- (a) an architect,
- (b) a chartered professional engineer recognised by Engineers Australia,
- (c) a registered professional engineer accredited by the Association of Professional Engineers Australia,
- (d) a fellow or a member, other than an affiliate, associate or student member, of the Australian Institute of Refrigeration, Air Conditioning and Heating.

## [18] Clause 248, heading

Omit “—residential apartment development”.

Insert instead “for design review panel advice”.

## [19] Clause 248

Omit “is referred to a design review panel for advice”.

Insert instead “requires review by a design review panel under *State Environmental Planning Policy (Design and Place) 2021*, section 35”.

## [20] Clause 258 Fee for application for modification of consent for local development

Omit “to which clause 115(3) applies” from clause 258(2A).

Insert instead “that requires review by a design review panel under *State Environmental Planning Policy (Design and Place) 2021*, section 35”.

## [21] Clause 258(3A)

Omit “referred to”. Insert instead “required to be reviewed by”.

## [22] Part 16B

Insert after clause 268A—

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# public consultation draft

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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## Part 16B Design review panels—the Act, s 4.64(1)

### 268B 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, or
  - (c) State significant development and State significant infrastructure (referred to as the *State design review panel*).
- (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 7 contains provisions relating to the members and procedures of a design review panel.

### 268C Membership of design review panels

- (1) A design review panel must consist of 3 or more persons appointed by the Minister.
- (2) One of the members must be appointed as chairperson of the panel.
- (3) A person may be appointed as a member of a panel only if the person has expertise in architecture, landscape architecture or urban design.
- (4) In appointing members of a design review panel, the Minister must ensure that, as far as practicable, the panel consists of architects, landscape architects and urban designers.
- (5) A person may not be appointed as a member of a panel if the person is an officer or employee of a consent authority that is advised by the panel.

### 268D Functions of design review panels

- (1) A design review panel must give independent advice about the design quality of proposed development that requires review by a design review panel under the *State Environmental Planning Policy (Design and Place) 2021*, section 35 including—
  - (a) whether the development is consistent with the design principles and design considerations, and
  - (b) if part of the development is not consistent, whether the inconsistency is justified on the grounds of the design of the development.
- (2) A design review panel may give advice under subclause (1) only if requested by—
  - (a) a person seeking to make a development application, or
  - (b) a consent authority.
- (3) A design review panel must provide advice under subclause (1) within 14 days of a request from a person seeking to make a development application or a consent authority.

# public consultation draft

Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- (4) A design review panel may also review and provide independent advice to a council about the provisions that relate to design quality of development contained in—
  - (a) a draft local environmental plan or development control plan, or
  - (b) a draft master plan or other planning policy document, or
  - (c) a local environmental plan or development control plan in force.
- (5) A design review panel may advise a council whether it endorses provisions reviewed under subclause (4)(c).
- (6) 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 and design considerations,
  - (b) to contribute to the co-ordination of design quality across boundaries of local government areas.
- (7) A design review panel may make public its advice under subclause (1) or (4) for the purposes of improving—
  - (a) the understanding of design quality, and
  - (b) the implementation of the design principles and design considerations,
- (8) A design review panel must exercise its functions—
  - (a) having regard to the design principles and design considerations specified in the *State Environmental Planning Policy (Design and Place) 2021*, and
  - (b) in accordance with the Local Government Design Review Panel Manual.

## [23] Schedule 1 Forms

Omit clause 2(1)(b). Insert instead—

- (b) design drawings,
- (b1) a site analysis,

## [24] Schedule 1, clause 2(1)(r)

Insert after clause 2(1)(q)—

- (r) for staged development—a staging plan.

## [25] Schedule 1, clause 2(3)

Omit “sketch referred to in subclause (1)(b) must indicate the following matters”.

Insert instead “design drawings referred to in subclause (1)(b) must be drawn to scale and must include the following”.

## [26] Schedule 1, clause 2(3)(f)–(f2)

Omit clause 2(3)(f). Insert instead—

- (f) drawings of the proposed landscape area, including species and materials to be used, in the context of the proposed building or buildings and the surrounding development and its context,
- (f1) compliance with development standards, including by annotations of plans, elevations and sections, such as building height and setbacks,

# public consultation draft

Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

(f2) existing adjacent buildings to show the context of the proposed development,

**[27] Schedule 1, clause 2(3)(h) and (i)**

Omit “sketch” wherever occurring. Insert instead “design drawings”.

**[28] Schedule 1, clause 2(3A)**

Insert after clause 2(3)—

(3A) The site analysis referred to in subclause (1)(b1) must include the following—

- (a) drawings of the site context and wider context,
- (b) constraints and opportunities, including the identified risks and hazards affecting the site,
- (c) drawings of the streetscape and adjacent public areas,
- (d) an analysis of different siting options, if relevant,
- (e) if the development is in an area in which the built form is changing—a description of the existing and likely future context.

**[29] Schedule 1, clause 2(5)**

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

Insert instead “development to which *State Environmental Planning Policy (Design and Place) 2021* applies”.

**[30] Schedule 1, clause 2(6)**

Omit the subclause.

**[31] Schedule 7**

Insert after Schedule 6—

## Schedule 7 Members and procedures of design review panels

clause 268B

### 1 Term and conditions of office

- (1) A member of a design review panel holds office for the term determined by the Minister, which must be at least 2 years, and may be re-appointed.
- (2) A member ceases to hold office—
  - (a) if the panel is abolished by the Minister, or
  - (b) if the member completes a term of office and is not re-appointed, or
  - (c) if the member dies or resigns, or
  - (d) in other circumstances determined by the Minister.
- (3) A member is entitled to be paid remuneration and expenses as determined by the Minister.
- (4) A member holds office subject to the conditions determined by the Minister

# public consultation draft

Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

## 2 Alternate members

- (1) The Minister may appoint one or more alternate members for a panel.
- (2) An alternate member may act in the place of a member of the 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.

## 3 Pecuniary interests

- (1) This clause applies to a member 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 panel meeting at which the matter is being considered, the member—
  - (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.
- (3) In this clause—  
*pecuniary interest* has the same meaning as in the *Local Government Act 1993*, Chapter 14.

## 4 Procedure at meetings

The procedure for the conduct of panel meetings is to be determined by the Minister in consultation with the members of the panel, taking into account the following documents—

- (a) the terms of reference for the State design review panel published by the Department in force from time to time,
- (b) the Local Government Design Review Panel Manual.

## 5 Quorum

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

## 6 Presiding member

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

## 7 Planning Secretary guidelines

The Planning Secretary may issue guidelines in relation to the membership and procedures of a panel.

## 8 Existing design review panels

- (1) On the commencement of this Schedule, an existing design review panel is taken to be a design review panel under this Regulation.

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# public consultation draft

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Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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- (2) During the transition period—
  - (a) this Regulation, clause 268C and this Schedule, clause 5 do not apply to an existing design review panel, and
  - (b) despite this Schedule, clause 4, the procedure for the conduct of panel meetings for an existing design review panel may be determined by the existing design review panel.
- (3) In this clause—  
*existing design review panel* means 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.  
*transition period* means the period commencing on the day on which this Schedule commences and ending 6 months later.

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