

Practice Note

Using the Apartment Design Guide

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Related Replaces Planning Circular PS 17-001 and PS 15-002

Introduction

This practice note provides guidance on the application of the Apartment Design Guide (ADG) in the development assessment process under the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Good apartment design delivers better living environments for residents, and enhances streetscapes and neighbourhoods. The Housing SEPP and the ADG encourage a consistent approach to apartment design across the State, certainty for councils, architects and applicants, and promotes design innovation through Design Review Panels (Panels).

The ADG is a guide and should not be applied as a set of strict development standards, unless explicitly required by the Housing SEPP.

The purpose of this practice note is to:

- explain the relationship between the Housing SEPP and the ADG and the application of the ADG to the assessment of development applications (DAs) and modification applications under the Housing SEPP;
- provide guidance to consent authorities regarding the application of the objectives and design criteria in the assessment of DAs and modification applications; and
- clarify the role of Panels.

Relationship between the Housing SEPP and the ADG

The ADG contains design guidance to improve the planning and design of residential apartment development in NSW. Chapter 4 of the Housing SEPP provides a consistent planning framework to improve the design quality of residential apartment development in NSW and gives legal force to the ADG.

Further clarification on this relationship is set out in **Appendix A**.

Chapter 4 of the Housing SEPP and the ADG apply to residential apartment development¹, which includes residential flat buildings, shop top housing and the residential accommodation component

¹ Residential apartment development is described in section 144 of the Housing SEPP.

of developments². They apply to buildings that are three or more storeys, excluding underground car parking storeys, and have four or more dwellings where the development consists of the:

- erection of a new building;
- substantial redevelopment or refurbishment of an existing building; or
- conversion of an existing building.

Apart from the non-discretionary development standards in Chapter 4 of the Housing SEPP³, the ADG is not intended to be, and should not be applied as, a set of strict development standards.

The design criteria and guidance provide examples of how to satisfy the objectives, but do not represent the only way to do this.

The consent authority should consider whether alternative design measures satisfy the objectives of the ADG, rather than simply assessing compliance with the design criteria or design guidance.

A requirement, standard or control that is specified in a development control plan (DCP), and relates to the matters set out in section 149 of the Housing SEPP, has no effect if the ADG also specifies a requirement, standard or control in relation to the same matters.

A summary of how the Housing SEPP and ADG interact, and their effect, is provided in **Appendix A**.

Design Review Panels

Panels are an important tool to improve and enhance the design quality of residential apartment developments. They are established by the Minister for Planning and Public Spaces with certain functions in accordance with the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation). Panels are comprised of design experts who advise consent authorities or proponents on the design quality of applications with reference to the nine design quality principles in Schedule 9 to the Housing SEPP and the ADG, among other things⁴. A Panel's advice function does not extend to State significant development (SSD) or development to which Chapter 7 of the Housing SEPP applies.

Part 5 of the ADG further explains the role of Panels in the development assessment process, and provides information on the specific procedures and templates councils can use to administer Panels.

Panels may identify and recommend improvements necessary to achieve consistency with the design quality principles and the ADG. Panels may also provide advice on how to improve design quality. In some instances, this may include recommendations that contradict individual provisions in the ADG where the Panel is convinced this would achieve a better design outcome. However, these recommendations cannot be inconsistent with the non-discretionary development standards in section 148 of the Housing SEPP.

² Sections 143 and 144 of the Housing SEPP limit the application of Chapter 4 of the Housing SEPP: it does not apply to land subject to Chapter 4 of the *State Environmental Planning Policy (Precincts – Regional) 2021* (Regional SEPP), to boarding houses or co-living housing (unless a local environmental plan specifies that development including those uses is residential apartment development), or to development comprising only class 1a or 1b buildings under the *Building Code of Australia*

³ Section 148 of the Housing SEPP identifies non-discretionary development standards: car parking for the building, the internal area for each apartment and ceiling heights for the building which, if complied with in a DA or modification application, cannot be used as grounds by a consent authority to refuse the proposal.

⁴ Sections 145 – 147 of the Housing SEPP require development applications and modifications for residential apartment developments, other than SSD, to be referred to Panels before their determination by consent authorities, unless a Panel has not been constituted for the local government area (LGA) in which the development will be carried out or a *competitive design process* has been held.

A Panel's advice is a relevant consideration for the consent authority when assessing a DA or modification application for residential apartment development under Chapter 4 of the Housing SEPP.

Additional details about the constitution, membership and functions of Panels are provided at Part 15, Division 4A of the EP&A Regulation.

Further information

For further information please contact Service NSW on 13 77 88.

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***Important note:** This practice note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this note.*

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Appendix A – How the Housing SEPP and the ADG Interact

	Chapter 4 of the Housing SEPP	ADG	Effect
Aims and application	The aims of Chapter 4 of the Housing SEPP are to improve the design quality of residential apartment development in NSW to: • promote sustainable development; • improve the built form and visual quality of buildings, streetscapes and public spaces; • enhance amenity and community safety; and • respond to demand for diverse housing options. Chapter 4 of the Housing SEPP applies to residential apartment development, as described in section 144 of the Housing SEPP, on land in NSW, except land to which the Regional SEPP applies.	The ADG helps to achieve better design and planning outcomes for residential apartment development by providing guidance for designing and assessing these developments on applicable land.	The ADG is to be used in conjunction with Chapter 4 of the Housing SEPP. Chapter 4 of the Housing SEPP gives legal force to the ADG.
Application of the design quality principles	Schedule 9 of the Housing SEPP sets out nine design quality principles which must be considered when designing proposals and during the development assessment process for DAs and modification applications.	The ADG provides objectives, design criteria and guidance on how residential apartment development proposals <u>can</u> meet the principles through good design and planning practice.	The Schedule 9 design quality principles must be <u>considered</u> by: • professionals when designing residential apartment development; • Panels when giving advice on proposals; and consent authorities when determining DAs and modification applications.

	Chapter 4 of the Housing SEPP	ADG	Effect
Determination of DAs and modification applications	When determining a DA or modification application, consent authorities are required to take into consideration: • advice (if any) from a Panel; • the ADG; and • the development's design quality in relation to the design quality principles in Schedule 9 to the Housing SEPP.	The ADG is a matter for consideration for consent authorities when determining a DA or modification application. The ADG is to be applied as a guide, and not as development standards to be complied with, unless explicitly required by Chapter 4 of the Housing SEPP. Development needs to demonstrate how it meets the objectives and design criteria set out in Parts 3 and 4 of the ADG. The design criteria provide examples of how the objectives can be practically achieved, but do not represent the only way to satisfy the objectives.	In determining a development's design quality in relation to the design quality principles, the consent authority is to consider how the development meets the objectives and design criteria set out in Parts 3 and 4 of the ADG. If a proposed development does not satisfy the design criteria, the consent authority is to consider whether the proposed alternative approach can achieve the relevant objective. Design guidance can be used to assist in this process. Apart from the non-discretionary development standards in Chapter 4 of the Housing SEPP, the ADG is not intended to be, and should not be applied as, a set of strict development standards.
Standards that cannot be used as grounds to refuse development consent	Section 148 of the Housing SEPP identifies non-discretionary development standards relating to minimum requirements for car parking for buildings, the internal area for each apartment and ceiling heights for buildings. If complied with, these matters cannot be used as grounds to refuse a DA or an application to modify a development consent.	The ADG sets out minimum requirements for car parking for buildings, the internal area for each apartment and ceiling heights for buildings.	If the proposal satisfies the non-discretionary development standards in section 148 of the Housing SEPP, the consent authority is not entitled to request more onerous requirements in relation to those matters, refuse the application on those grounds, or impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous.

	Chapter 4 of the Housing SEPP	ADG	Effect
DCP cannot be inconsistent with the ADG	Section 149 of the Housing SEPP identifies that some provisions in the ADG prevail over any similar provisions in a council DCP.	Parts 3 and 4 of the ADG provide detailed objectives, design criteria and design guidance for siting a development and designing the building, including the provisions identified in section 149 of the Housing SEPP.	If a DCP contains provisions that specify requirements, standards or controls in relation to the following: • visual privacy; • solar and daylight access; • common circulation and spaces; • apartment size and layout; • ceiling heights; • private open space and balconies; • natural ventilation; and • storage; those DCP provisions will have no effect, and the relevant ADG provisions will prevail.
Design review panels	Sections 145 and 146 of the Housing SEPP provide the circumstances in which a DA or modification application must be referred to the Panel for the LGA in which the development will be carried out. These provisions do not apply if: • a Panel has not been constituted for the LGA to which the development relates; or • the development has been subject to a <i>competitive design process</i>⁵.	Part 5 of the ADG explains: • functions, membership and constitution of Panels; • roles and responsibilities of councils and Panel members; • operating procedures and guidelines; • Templates, including meeting agenda, development assessment overview, and meeting minutes and design quality test.	Part 15, Division 4A of the EP&A Regulation sets out the constitution, membership and functions of Panels. Chapter 4 of the Housing SEPP requires the referral of DAs and modification applications to Panels in certain circumstances. Part 5 of the ADG is a toolkit that provides further information on the functions, membership, roles and responsibilities, and procedures of Panels.

⁵ A *competitive design process* means a design competition held in accordance with the *Design Competition Guidelines* published by the Department of Planning, Housing and Infrastructure in September 2023.