

Article Information

Authors: Paul Vergotis, Thomas Webb

Service: Planning & Environment, Project Finance, Projects & Construction, Property & Development, Property Development

Sector: Energy & Resources, Power & Utilities, Real Estate, Renewables

Design Verification, Net Zero Compatibility and EV Charging Facilities: Amendments to the Environment Planning and Assessment Regulation 2000 (NSW) and the Minister's Direction under the Proposed Design & Place Framework

This insight is the third and final part of our series on the proposed Design & Place framework. [Part 1](#) provided an overview of the proposed framework. [Part 2](#) canvassed the new requirements under the draft Design and Place State Environmental Planning Policy 2021 (DP SEPP).

To assist in the implementation of the DP SEPP, the Department of Planning, Industry and Environment (**Department**) has recently exhibited the draft *Environmental and Planning Assessment Amendment (Design and Place) Regulation 2021* (**Regulation**) and *Environmental Planning and Assessment (Design Principles and Considerations) Direction 2022* (**Minister's Direction**).

Regulation

The Regulation proposes to make changes to the *Environmental and Planning Assessment Regulation 2000* (NSW). The amendments serve to clarify some of the implications of the DP SEPP and are significant additions to the regime.

A suite of definitions will be added to the existing instrument, including new understandings of green infrastructure, residential apartment development and design review panel.[\[1\]](#)

While not an exhaustive list, some of the key provisions proposed by the Regulation relate to:

- Development control plans (**DCPs**);
- Design verification statements;
- Net zero compatibility;
- Charging facilities for electric vehicles; and
- Design review panels.

Development Control Plans

A DCP is prepared by a local planning authority to provide fine grain detail and guidance on the compatibility of certain types of development which are permissible under environmental planning instruments and land zoning objectives within its jurisdiction.[\[2\]](#)

The Regulation provides that when preparing a DCP, a council must consider the design principles and considerations contained in the DP SEPP as well as the *Urban Design Guide*.[\[3\]](#) As a result, the implementation of the design principles proposed in the DP SEPP will become more robust whilst enabling a council to individualise the principles depending on the types of land-use in its jurisdiction.

Design Verification Statement

Development applications for residential apartment developments, urban design developments and developments involving public or common space of more than 1,000 square metres must be accompanied by a design verification statement.[\[4\]](#)

The same requirement applies to modification applications made under section 4.55(2) or section 4.56(1) of the *Environment Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

A design verification statement must be prepared by an architect, urban designer or landscape architect depending on the type of development involved.[\[5\]](#)

Crucially, neither a construction certificate or an occupation certificate can be issued unless the certifier is in receipt of the design verification statement.[\[6\]](#)

Net Zero Compatibility

The Regulation further provides that applications for developments subject to the DP SEPP must include a net zero statement.[\[7\]](#) The net zero statement consists of important information relating to the building's estimated energy consumption, the direct and indirect emissions from the building and data of how the emissions will be recorded and reported.[\[8\]](#)

Of particular interest is the requirement that evidence be included in the net zero statement which demonstrates that the development possess the infrastructure and space necessary for the building to achieve net zero emissions by 1 January 2035.[\[9\]](#) This is significant considering the fact that this requirement exceeds the NSW Government's current objective to cut emissions by 50% by 2030 and reach net zero emissions by 2050.[\[10\]](#)

Charging Facilities For Electric Vehicles

Another intriguing proposal in the Regulation is that developments which include a car park will be required to install an electricity supply distribution board capable of being used as a charging facility for electric vehicles.[\[11\]](#)

The focus on charging facilities may seem onerous but it aligns with the NSW Government's goal to build a world-class electric vehicle charging network under the *NSW Electric Vehicle Strategy*.[\[12\]](#) The provision is also reflective of the Government's goal of achieving net zero by 2050.[\[13\]](#)

Design Review Panels

The Regulation affords the Minister expansive powers to control the constitution of design review panels (**DRP's**).[\[14\]](#) The Minister will have the discretion to constitute a DRP which acts in relation to numerous local government areas simultaneously or in relation to state significant development or infrastructure.[\[15\]](#) The Minister will have the complete power to abolish a DRP at any time and for any reason.[\[16\]](#)

While DRP's are not a new concept as they have played an important part of the development assessment process in relation to state significant development and local development, the Regulation expands the function of DRP's to give independent advice to a consent authority about whether the design quality of a development is consistent with the design principles and considerations contained in the DP SEPP.[\[17\]](#)

A DRP will be required to exercise its functions having regard to the design principles and considerations contained in the DP SEPP and in accordance with the *Design Review Panel Manual for Local Government*.[\[18\]](#)

Minister's Direction

The Minister has prepared a draft direction pursuant to section 9.1 of the EP&A Act. The Minister's Direction will ensure that the Design & Place Framework is fully integrated into all stages of the development process.

If gazetted, the Minister's Direction would require all planning authorities to ensure that planning proposals take into account and are consistent with the principles and considerations set out in the DP SEPP and the new *Urban Design Guide* and have been referred to the relevant design review panel for advice. Further, the proposal must demonstrate how it responds to and has been informed by contributions from Aboriginal stakeholders of the land the proposal relates to, including its reciprocity to Country design features.

The Direction is complemented by a list of objectives which are reflective of the thinking behind the proposed changes:

To ensure the design principles and design considerations set out in the State Environmental Planning Policy (Design and Place) [insert date] are considered early in the planning process

To ensure the objectives of the Urban Design Guide published by the department in [insert date] are considered early in the planning process

To integrate good design processes into planning and development to create places that support the health and well-being of the community and to achieve better built forms and aesthetics of buildings, streetscapes and public spaces by providing consistent urban design guidance that supports place-based approaches for precinct planning and development

To ensure planned precincts receive the appropriate design evaluation from Design Review Panels and that advice received is considered and integrated

It is important to note that the Minister's Direction will apply to proposals that affect a land greater than 1 hectare and exist within an existing or proposed residential, commercial, mixed use or industrial zone or any other zone in which residential development is permitted. As a result, the objectives of the Direction are only relevant in specific circumstances but a general observation is that it will apply to all precinct-style developments.

There are a series of a circumstances where a Planning Proposal (may need to distinguish this as readers may get confused between a rezoning and a development proposal) may be inconsistent with the directive. Notably, a planning authority must satisfy the Department that an inconsistent proposal is justified by an overarching strategy that considers the Direction's objectives or is of minor significance.

This insight has been written for general educational purposes only and is not to be taken as legal advice.

[1] Draft *Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021* ('Regulation') Sch 1 [1] – See draft clause 3.

[2] *Environment Planning and Assessment Act 1979* (NSW) ss 3.42(1), s 3.43 (1).

[3] Regulation (n 1) Sch 1 [3] – See draft clause 16(3).

[4] Regulation (n 1) Sch 1 [8] – See draft clause 57(1).

[5] Ibid Sch 1 [8] – See draft clause 57(2)-(4).

[6] Ibid Sch 1 [13]-[14] – See draft clauses 143A(2), 154A(2).

[7] Ibid Sch 1 [8] – See draft clause 57D(1).

[8] Ibid.

[9] Ibid Sch 1 [8] – See draft clause 57D(1)(c).

[10] NSW Department of Planning, Industry and Environment, *Net Zero Plan Stage 1: 2020-30 Implementation Update* (Report, 28 September 2021) <<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Climate-change/net-zero-plan-stage-1-2020-30-implementation-update-210460.pdf>>.

[11] Regulation (n 1) Sch 1 [9] – See draft clause 99(1).

[12] NSW Department of Planning, Industry and Environment, *NSW Electric Vehicle Strategy* (Policy Paper, June 2021) <<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Climate-change/nsw-electric-vehicle-strategy-210225.pdf>> 21.

[13] Ibid 2.

[14] Regulation (n 1) Sch 1 [22] – See draft clause 268B.

[15] Ibid; Note – the design review panel for state significant development or infrastructure will be referred to as the "State design review panel".

[16] Ibid Sch 1 [22] – See draft clause 268B(3).

[17] Ibid Sch 1 [22] – See draft clause 268D(1).

[\[18\]](#) Ibid Sch 1 [22] - See draft clause 268D(8).