



New South Wales

Environmental Planning and Assessment Further Amendment (Building Sustainability Index: BASIX) Regulation 2006

under the

Environmental Planning and Assessment Act 1979

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

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to extend the BASIX certification scheme under the *Environmental Planning and Assessment Regulation 2000*. Under that scheme, applications to carry out certain kinds of residential development have to be accompanied by a list of commitments by the applicant as to the sustainability measures to be taken in relation to the development (that is, measures to improve the capacity of the development to reduce consumption of mains supplied potable water, to reduce emissions of greenhouse gases and to perform in a thermally efficient manner). If the application is approved, fulfilment of such commitments will become a condition of the relevant development consent or complying development certificate.

The extension made to the BASIX certification scheme by this Regulation is that the scheme, which currently only applies to new buildings and changes of use of buildings, will also apply:

- (a) to alterations, enlargements or extensions of a building that contains one or more dwellings (but that is not a hotel or motel), where the estimated construction cost of the development is above a specified level, and
- (b) to development for the purpose of large swimming pools and spas.

The BASIX certification scheme is also changed to provide for the consequences of optional compliance with the scheme (that is, where a BASIX certificate accompanies a development application or an application for a complying development certificate despite the fact that the BASIX certification scheme does not require a BASIX certificate for the development that is the subject of the application).

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Explanatory note

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 80A (11) (prescribed conditions of consent) and 157 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Further Amendment (Building Sustainability Index: BASIX) Regulation 2006*.

2 Commencement

This Regulation commences on 1 October 2006.

3 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

BASIX affected development means any of the following development that is not BASIX excluded development:

- (a) development that involves the erection (but not the relocation) of a BASIX affected building,
- (b) development that involves a change of building use by which a building becomes a BASIX affected building,
- (c) development that involves the alteration, enlargement or extension of a BASIX affected building, where the estimated construction cost of the development is:
 - (i) \$100,000 or more—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 October 2006 and before 1 July 2007, or
 - (ii) \$50,000 or more—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 July 2007,
- (d) development for the purpose of a swimming pool or spa, or combination of swimming pools and spas, that services or service only one dwelling and that has a capacity, or combined capacity, of 40,000 litres or more.

BASIX excluded development means any of the following development:

- (a) development for the purpose of a garage, storeroom, car port, gazebo, verandah or awning,
- (b) alterations, enlargements or extensions to a building listed on the State Heritage Register under the *Heritage Act 1977*,
- (c) alterations, enlargements or extensions that result in a space that cannot be fully enclosed (for example, a verandah that is open or enclosed by screens, mesh or other materials that permit the free and uncontrolled flow of air), other than a space can be fully enclosed but for a vent needed for the safe operation of a gas appliance,

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- (d) alterations, enlargements or extensions that the Director-General has declared, by order published in the Gazette, to be BASIX excluded development.

BASIX optional development means any of the following development that is not BASIX excluded development:

- (a) development that involves the alteration, enlargement or extension of a BASIX affected building, where the estimate of the construction cost of the development is:
- (i) less than \$100,000—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 October 2006 and before 1 July 2007, or
 - (ii) less than \$50,000—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 July 2007,
- (b) development for the purpose of a swimming pool or spa, or combination of swimming pools and spas, that services or service only one dwelling and that has a volume, or combined volume, of less than 40,000 litres.

[2] Clause 3, definition of “initial BASIX area”

Omit the definition.

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

Insert after clause 50 (6) (after the note):

- (7) In determining whether an alteration, enlargement or extension of a BASIX affected building is BASIX affected development, the consent authority must make its determination by reference to a genuine estimate of the construction costs of the work the subject of the development application, including any part of the work that is BASIX excluded development. The estimate must, unless the consent authority is satisfied that the estimated cost indicated in the development application is neither genuine nor accurate, be the estimate so indicated.

[4] Clause 55A Amendments with respect to BASIX commitments

Insert “or to a development application in relation to BASIX optional development that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied)” after “Schedule 1” in clause 55A (1).

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Schedule 1 Amendments

[5] Clause 97A

Omit the clause. Insert instead:

97A Fulfilment of BASIX commitments

- (1) This clause applies to the following development:
 - (a) BASIX affected development,
 - (b) any BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied).
- (2) For the purposes of section 80A (11) of the Act, fulfilment of the commitments listed in each relevant BASIX certificate for development to which this clause applies is a prescribed condition of any development consent for the development.

[6] Clause 115 What are the requirements for an application for modification of a development consent?

Insert “or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied)” after “certificate” where firstly occurring in clause 115 (1C).

[7] Clause 115 (1C)

Insert “or BASIX certificates” after “certificate” where secondly occurring.

[8] Clause 126 How must an application for a complying development certificate be made?

Insert after clause 126 (2):

- (3) In determining whether an alteration, enlargement or extension of a BASIX affected building is BASIX affected development, the certifying authority must make its determination by reference to a genuine estimate of the construction costs of the work, including any part of the work that is BASIX excluded development. The estimate must, unless the certifying authority is satisfied that the estimated cost indicated in the application for a complying development certificate is neither genuine nor accurate, be the estimate so indicated.

[9] Clause 129A Amendments with respect to BASIX commitments

Insert “or certificates” after “BASIX certificate” in clause 129A (1).

[10] Clause 129A (1)

Insert “or to an application for a complying development certificate for BASIX optional development that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A of Schedule 1 for it to be so accompanied)” after “Schedule 1”.

[11] Clause 136D

Omit the clause. Insert instead:

136D Fulfilment of BASIX commitments

- (1) This clause applies to the following development:
 - (a) BASIX affected development,
 - (b) any BASIX optional development in relation to which a person has made an application for a complying development certificate that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A of Schedule 1 for it to be so accompanied).
- (2) A complying development certificate for development to which this clause applies must be issued subject to a condition that the commitments listed in each relevant BASIX certificate for the development must be fulfilled.

[12] Clause 145 Compliance with development consent and Building Code of Australia

Omit “the relevant” from clause 145 (1) (a1). Insert instead “each relevant”.

[13] Clause 149 Applications for occupation certificates

Insert “or in BASIX certificates” after “certificate” where firstly occurring in clause 149 (2A).

[14] Clause 149 (2A)

Omit “the relevant”. Insert instead “each relevant”.

[15] Clause 154B Fulfilment of BASIX commitments

Omit “a BASIX affected building in respect of which” from clause 154B (1).

Insert “BASIX affected development in respect of which, and BASIX optional development in respect of which,”.

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Schedule 1 Amendments

[16] Clause 154B (2)

Omit “a BASIX affected building”.

Insert instead “any building resulting from, or any building that becomes a BASIX affected building because of, BASIX affected development or BASIX optional development”.

[17] Clause 154C BASIX completion receipt

Insert before clause 154C (1):

(1A) This clause applies:

- (a) from 1 October 2006 until 30 June 2007 (inclusive) to:
 - (i) the erection of a BASIX affected building that is BASIX affected development, or
 - (ii) a change of building use by which a building becomes a BASIX affected building, and
- (b) on and from 1 July 2007, to BASIX affected development in respect of which a relevant BASIX certificate or relevant BASIX certificates requires a certifying authority to monitor fulfilment of any of the commitments listed in the certificate.

[18] Clause 154C (1)

Omit “BASIX affected building to which clause 154B applies”.

Insert instead “building the subject of development to which this clause applies”.

[19] Clause 154C (2) (a)

Omit “the relevant”. Insert instead “each relevant”.

[20] Clause 164A BASIX certificates

Omit “any proposed development that involves the erection of a building or a change of building use” from clause 164A (1).

Insert instead “any proposed BASIX affected development and any proposed BASIX optional development”.

[21] Clause 164A (3A)

Insert after clause 164A (3):

- (3A) Subclause (3) does not apply to development that involves the alteration, enlargement or extension of a BASIX affected building that contains more than one dwelling.

Note. See Schedule 1, clauses 2A, 4A and 6A which require separate certificates for each dwelling.

[22] Clause 286A Savings and transitional provisions: staged introduction of scheme

Insert after clause 286A (3):

- (4) The amendments to this Regulation made by the *Environmental Planning and Assessment Further Amendment (Building Sustainability Index: BASIX) Regulation 2006* do not apply to:
- (a) a development application, or application for a complying development certificate, that has been made before 1 October 2006, or
 - (b) a development consent or complying development certificate arising from an application referred to in paragraph (a), or
 - (c) an application for a construction certificate or occupation certificate that is made in relation to development carried out under the authority of a development consent or complying development certificate arising from an application referred to in paragraph (a).

[23] Schedule 1 Forms

Insert after clause 2 (1) (l):

- (m) in the case of BASIX optional development—if the development application is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A for it to be so accompanied), such other documents as any BASIX certificate for the development requires to accompany the application.

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Schedule 1 Amendments

[24] Schedule 1, clause 2 (3) (i)

Insert after clause 2 (3) (h):

- (i) in the case of BASIX optional development—if the development application is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A for it to be so accompanied), such other matters as any BASIX certificate for the development requires to be included on the sketch.

[25] Schedule 1, clause 2A

Omit the clause. Insert instead:

2A BASIX certificate required for certain development

- (1) In addition to the documents required by clause 2, a development application for any BASIX affected development must also be accompanied by a BASIX certificate or BASIX certificates for the development, being a BASIX certificate or BASIX certificates that has or have been issued no earlier than 3 months before the date on which the application is made.
- (2) If the proposed development involves the alteration, enlargement or extension of a BASIX affected building that contains more than one dwelling, a separate BASIX certificate is required for each dwelling concerned.

[26] Schedule 1, clause 4 (1) (h)

Insert after clause 4 (1) (g):

- (h) in the case of BASIX optional development—if the application for a complying development certificate is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A for it to be so accompanied), such other documents as any BASIX certificate for the development requires to accompany the application.

[27] Schedule 1, clause 4 (3) (i)

Insert after clause 4 (3) (h):

- (i) in the case of BASIX optional development—if the application for a complying development certificate is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A for it to be so accompanied), such other matters as any BASIX certificate for the development requires to be included on the sketch.

[28] Schedule 1, clause 4 (5) (h)

Insert after clause 4 (5) (g):

- (h) in the case of BASIX optional development—if the application for a complying development certificate is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A for it to be so accompanied), such other matters as any BASIX certificate for the development requires to be included in the plans and specifications.

[29] Schedule 1, clause 4A

Omit the clause. Insert instead:

4A BASIX certificate required for certain development

- (1) In addition to the documents required by clause 4, an application for a complying development certificate for any BASIX affected development must also be accompanied by a BASIX certificate or BASIX certificates for the development, being a BASIX certificate or BASIX certificates that has or have been issued no earlier than 3 months before the date on which the application is made.
- (2) If the proposed development involves the alteration, enlargement or extension of a BASIX affected building that contains more than one dwelling, a separate BASIX certificate is required for each dwelling concerned.

[30] Schedule 1, clause 6A

Omit the clause. Insert instead:

6A BASIX certificate required for certain development

- (1) This clause applies to:
 - (a) BASIX affected development, and

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- (b) BASIX optional development in relation to which a person made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A for it to be so accompanied).
- (2) In addition to the documents required by clause 6, an application for a construction certificate for any development to which this clause applies must also be accompanied by a BASIX certificate or BASIX certificates for the development, being either the BASIX certificate applicable to the development when the relevant development consent was granted or some other BASIX certificate or BASIX certificates that has or have been issued no earlier than 3 months before the date on which the application is made.
- (3) If the proposed development involves the alteration, enlargement or extension of a BASIX affected building that contains more than one dwelling, a separate BASIX certificate is required for each dwelling concerned.

BY AUTHORITY
