



New South Wales

Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004

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*.

CRAIG KNOWLES, M.P.,

Minister for Infrastructure and Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* so as to establish a scheme under which applications to carry out certain kinds of residential development will 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.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including section 157 (the general power to make regulations) and section 80A.

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Clause 1 Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004

**Environmental Planning and Assessment Amendment
(Building Sustainability Index: BASIX) Regulation 2004**

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004*.

2 Commencement

This Regulation commences on 1 July 2004.

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 building means:

- (a) a dwelling-house (that is, a building comprising one dwelling and nothing else but structures ancillary to the dwelling), or
- (b) a dual occupancy building (that is, a building comprising 2 dwellings and nothing else but structures ancillary to those dwellings), or
- (c) a guest house, boarding house, lodging house or hostel (including a backpackers hostel), being a building with a gross floor area of less than 300 square metres,

but does not include:

- (d) one of 3 or more dwelling-houses (comprising a single development) to be erected on land the subject of a development application or development consent for subdivision under:
 - (i) the *Strata Schemes (Freehold Development) Act 1973*, or
 - (ii) the *Strata Schemes (Leasehold Development) Act 1986*,so as to create a separate lot for each such dwelling-house, or
- (e) one of 2 or more dual occupancy buildings (comprising a single development) to be erected on land the subject of a development application or development consent for subdivision under:
 - (i) the *Strata Schemes (Freehold Development) Act 1973*, or
 - (ii) the *Strata Schemes (Leasehold Development) Act 1986*,so as to create a separate lot for each such building.

BASIX certificate means a certificate issued by the Director-General under clause 164A.

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Schedule 1

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initial BASIX area means the area comprising the local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby and Woollahra.

relevant BASIX certificate, in relation to development, means:

- (a) in the case of development the subject of development consent:
 - (i) a BASIX certificate that is applicable to the development when development consent is granted or (in the case of development consent modified under section 96 of the Act) modified, or
 - (ii) if a replacement BASIX certificate accompanies any subsequent application for a construction certificate, the replacement BASIX certificate, or
- (b) in the case of development the subject of a complying development certificate, a BASIX certificate that is applicable to the development when the complying development certificate is granted or (in the case of a complying development certificate modified under section 87 of the Act) modified.

[2] Clause 55A

Insert after clause 55:

55A Amendments with respect to BASIX commitments

- (1) This clause applies to a development application that has been accompanied by a BASIX certificate pursuant to clause 2A of Schedule 1.
- (2) Without limiting clause 55, a development application may be amended or varied by the lodging of:
 - (a) a new BASIX certificate to replace a BASIX certificate that accompanied the application, or to replace any

subsequent BASIX certificate lodged under this clause, and

- (b) if any new accompanying document is required or any existing accompanying document requires amendment, a new or amended accompanying document.
- (3) If an amendment or variation of a development application, or of any accompanying document, results in the proposed development differing in any material respect from the description contained in a current BASIX certificate for the development, the application to amend or vary the development application must have annexed to it a replacement BASIX certificate whose description takes account of the amendment or variation.
- (4) In this clause, a reference to the *accompanying document* is a reference to any document required to accompany a development application pursuant to clause 2 of Schedule 1.

[3] Clause 97A

Insert after clause 97:

97A Fulfilment of BASIX commitments

- (1) This clause applies:
 - (a) on and from 1 July 2004, to all land within the initial BASIX area, and
 - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) This clause applies to all development:
 - (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or
 - (b) that involves a change of building use by which a building becomes a BASIX affected building.
- (3) 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.

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Schedule 1 Amendments

[4] **Clause 100 Notice of determination—what is the form of the notice?**

Insert “(including conditions prescribed under section 80A (11) of the Act)” after “conditions” in clause 100 (1) (b).

[5] **Clause 100 (1) (c)**

Insert “(other than conditions prescribed under section 80A (11) of the Act)” after “conditions” where firstly occurring.

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

Insert after clause 115 (1B):

- (1C) An application for the modification of a development consent under section 96 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by one or more BASIX certificates, must also be accompanied by appropriate BASIX certificates.
- (1D) The appropriate BASIX certificates for the purposes of subclause (1C) are:
 - (a) to the extent to which any current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and
 - (b) to the extent to which any current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.

[7] **Clause 129A**

Insert after clause 129:

129A Amendments with respect to BASIX commitments

- (1) This clause applies to an application for a complying development certificate that has been accompanied by a BASIX certificate pursuant to clause 4A of Schedule 1.
- (2) An application for a complying development certificate may be amended or varied by the lodging of:

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- (a) a new BASIX certificate to replace a BASIX certificate that accompanied the application, or to replace any subsequent BASIX certificate lodged under this clause, and
 - (b) if any new accompanying document is required or any existing accompanying document requires amendment, a new or amended accompanying document.
- (3) If an amendment or variation of an application for a complying development certificate, or of any accompanying document, results in the proposed development differing in any material respect from the description contained in a current BASIX certificate for the development, the application to amend or vary the application for the complying development certificate must have annexed to it a replacement BASIX certificate whose description takes account of the amendment or variation.
- (4) In this clause, a reference to the *accompanying document* is a reference to any document required to accompany an application for a complying development certificate pursuant to clause 4 of Schedule 1.

[8] Clause 136D

Insert after clause 136C:

136D Fulfilment of BASIX commitments

- (1) This clause applies:
 - (a) on and from 1 July 2004, to all land within the initial BASIX area, and
 - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) This clause applies to all development:
 - (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or
 - (b) that involves a change of building use by which a building becomes a BASIX affected building.

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Schedule 1 Amendments

- (3) 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.

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

Insert before clause 145 (1) (a):

- (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires,

[10] Clause 149 Applications for occupation certificates

Insert after clause 149 (2):

- (2A) In the case of an application with respect to development the subject of a condition requiring commitments listed in a BASIX certificate to be fulfilled, the application must also be accompanied by a copy of each relevant BASIX certificate for the development.

[11] Clause 154B

Insert after clause 154A:

154B Fulfilment of BASIX commitments

- (1) This clause applies to a BASIX affected building in respect of which a relevant BASIX certificate requires a certifying authority to monitor fulfilment of any of the commitments listed in the certificate.
- (2) A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled.
- (3) For the purpose of satisfying itself as to the fulfilment of any such commitment, a certifying authority may rely on the advice of any properly qualified person.

[12] **Clause 164A**

Insert after clause 164:

164A BASIX certificates

- (1) The Director-General may issue certificates (***BASIX certificates***) in relation to the sustainability of any proposed development that involves the erection of a building or a change of building use.
- (2) Without limiting subclause (1), a BASIX certificate may be issued by means of a computerised system, as approved from time to time by the Director-General, being a system to which members of the public are given on-line access, whether over the internet or otherwise.
- (3) A BASIX certificate applies only to a single dwelling, accordingly any provision of this Regulation that requires a BASIX certificate for development involving more than one dwelling is taken to require separate BASIX certificates for each of the dwellings concerned.
- (4) A BASIX certificate must contain the following:
 - (a) a description of the proposed development, corresponding in all relevant respects with the description contained in:
 - (i) the relevant application, and
 - (ii) any relevant accompanying documents,
 - (b) a detailed list of the commitments that the applicant has made as to the manner in which the development will be carried out (being commitments as to the measures, such as design and fit-out, that the applicant proposes to implement in order to promote the sustainability of the development),
 - (c) a statement to the effect that the proposed development will meet the Government's requirements for sustainability if the applicant's commitments are fulfilled.
- (5) In this clause:

accompanying document means any document required to accompany an application pursuant to clause 2, 4 or 6 of Schedule 1.

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application means:

- (a) a development application, application for a complying development certificate or application for a construction certificate, or
- (b) an application for modification of a development consent, complying development certificate or construction certificate.

sustainability, in relation to a dwelling, means the capacity of the dwelling:

- (a) to reduce consumption of mains-supplied potable water, and
- (b) to reduce emissions of greenhouse gases, and
- (c) to perform in a thermally efficient manner.

[13] Clause 286A

Insert after cause 286:

286A Savings and transitional provisions: introduction of BASIX scheme

The amendments to this Regulation made by the *Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004* do not apply to:

- (a) a development application, or application for a complying development certificate, that has been made before 1 July 2004, or
- (b) a development application, or application for a complying development certificate that is made on or after 1 July 2004, but before 1 January 2005, in relation to a building to be constructed:
 - (i) pursuant to a building agreement entered into before 1 July 2004, or
 - (ii) pursuant to a building agreement entered into on or after 1 July 2004 as a consequence of an offer made, or deposit paid, before 1 July 2004, or
- (c) a development consent or complying development certificate arising from an application referred to in paragraph (a) or (b), or

- (d) 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) or (b).

[14] Schedule 1 Forms

Insert after clause 2 (1) (k):

- (l) in the case of development to which clause 2A applies, such other documents as any BASIX certificate for the development requires to accompany the application.

[15] Schedule 1, clause 2 (3) (h)

Insert after clause 2 (3) (g):

- (h) in the case of development to which clause 2A applies, such other matters as any BASIX certificate for the development requires to be included on the sketch.

[16] Schedule 1, clause 2A

Insert after clause 2:

2A BASIX certificate required for certain development

- (1) This clause applies:
 - (a) on and from 1 July 2004, to all land within the initial BASIX area, and
 - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) In addition to the documents required by clause 2, a development application for any development:
 - (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or
 - (b) that involves a change of building use by which a building becomes a BASIX affected building,

must also be accompanied by a BASIX certificate, issued no earlier than 3 months before the date on which the application is made, for each dwelling comprised in the development.

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[17] Schedule 1, clause 4 (1) (g)

Insert after clause 4 (1) (f):

- (g) in the case of development to which clause 4A applies, such other documents as any BASIX certificate for the development requires to accompany the application.

[18] Schedule 1, clause 4 (3) (h)

Insert after clause 4 (3) (g):

- (h) in the case of development to which clause 4A applies, such other matters as any BASIX certificate for the development requires to be included on the sketch.

[19] Schedule 1, clause 4 (5) (g)

Insert after clause 4 (5) (f):

- (g) in the case of development to which clause 4A applies, such other matters as any BASIX certificate for the development requires to be included in the plans and specifications.

[20] Schedule 1, clause 4A

Insert after clause 4:

4A BASIX certificate required for certain development

- (1) This clause applies:
 - (a) on and from 1 July 2004, to all land within the initial BASIX area, and
 - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) In addition to the documents required by clause 4, an application for a complying development certificate for any development:
 - (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or

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- (b) that involves a change of building use by which a building becomes a BASIX affected building,

must also be accompanied by a BASIX certificate, issued no earlier than 3 months before the date on which the application is made, for each dwelling comprised in the development.

[21] Schedule 1, clause 6 (1) (d)

Insert after clause 6 (1) (c):

- (d) in the case of development to which clause 6A applies, such other documents as any BASIX certificate for the development requires to accompany the application.

[22] Schedule 1, clause 6 (3) (g)

Insert after clause 6 (3) (f):

- (g) in the case of development to which clause 6A applies, such other matters as any BASIX certificate for the development requires to be included in the plans and specifications.

[23] Schedule 1, clause 6A

Insert after clause 6:

6A BASIX certificate required for certain development

- (1) This clause applies:
- (a) on and from 1 July 2004, to all land within the initial BASIX area, and
 - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) In addition to the documents required by clause 6, an application for a construction certificate for any development:
- (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or

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(b) that involves a change of building use by which a building becomes a BASIX affected building,

must also be accompanied by a BASIX certificate, being either the BASIX certificate applicable to the development when the relevant development consent was granted or some other BASIX certificate issued no earlier than 3 months before the date on which the application is made, for each dwelling comprised in the development.

BY AUTHORITY
