



New South Wales

Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2023

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*.

PAUL SCULLY, MP
Minister for Planning and Public Spaces

Explanatory note

The object of this regulation is to amend the uncommenced *Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2022* to make changes required before the commencement of that regulation and *State Environmental Planning Policy (Sustainable Buildings) 2022* on 1 October 2023.

This regulation also makes further provision for BASIX certificates that accompany development applications and applications for complying development certificates for BASIX development and BASIX optional development.

This regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.12(9), 4.17(11), 4.28, 4.64, 6.33(1) and 10.13, the general regulation-making power.

Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2023

under the

Environmental Planning and Assessment Act 1979

1 Name of regulation

This regulation is the *Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2023*.

2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2022

[1] Schedule 1 Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

Insert at the end of section 10A(4)(c), as inserted by Schedule 1[1]—

, or

- (d) an assessor accredited under NABERS.

[2] Schedule 1[1], proposed section 10B(1)

Omit “under *State Environmental Planning Policy (Sustainable Buildings) 2022*”.

[3] Schedule 1[1], proposed section 10B(4)(b)

Omit “the National Australian Built Environment Rating System, known as”.

[4] Schedule 1[1], proposed section 10B

Insert after section 10B(5)—

- (6) Subsection (2), to the extent it relates to energy use, and subsections (3) and (4) do not apply to large commercial development on land to which the following local environmental plans apply—
- (a) *Sydney Local Environmental Plan 2012*,
 - (b) *Sydney Local Environmental Plan (Green Square Town Centre) 2013*,
 - (c) *Sydney Local Environmental Plan (Green Square Town Centre—Stage 2) 2013*.
- (7) Despite subsection (6), subsections (2)–(4) apply to large commercial development to the extent that the development relates to prescribed serviced apartments.
- (8) In this section—
large commercial development and *prescribed serviced apartments* have the same meaning as in *State Environmental Planning Policy (Sustainable Buildings) 2022*.

[5] Schedule 1[3A]

Insert after Schedule 1[3]—

[3A] Section 59A

Insert after section 59—

59A Information to be provided to Planning Secretary about Crown building work under Sustainable Buildings SEPP

- (1) This section applies to non-residential development under *State Environmental Planning Policy (Sustainable Buildings) 2022* that is Crown building work certified to comply with the *Building Code of Australia* under the Act, Part 6 and that does not require a construction certificate under the Act, section 6.7(2).
- (2) Before carrying out building work for development to which this section applies, the information required to accompany an application

for a construction certificate under sections 10A and 10B must be given to the Planning Secretary through the NSW planning portal.

- (3) Sections 10A(2)–(4) and 10B(3)–(5) apply to the information given to the Planning Secretary under this section in the same way as they apply to an application for a construction certificate.

[6] Schedule 1[5A] and [5B]

Insert after Schedule 1[5]—

[5A] Schedule 1A Savings, transitional and other provisions

Renumber Part 2, section 3 as section 6 and Part 3, sections 4 and 5 as sections 7 and 8.

[5B] Schedule 1A

Insert at the end of the schedule, with appropriate part and section numbering—

**Part Provision consequent on commencement of
Environmental Planning and Assessment
Amendment (Sustainable Buildings)
Regulation 2022**

Application of amendments

- (1) The amendments to section 71 made by the *Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2022* do not, until the end of 30 June 2024, apply to—
- (a) BASIX development referred to in *State Environmental Planning Policy (Sustainable Buildings) Regulation 2022*, section 4.2(2), or
- (b) a BASIX certificate issued for the development.
- (2) Section 71, as in force immediately before 1 October 2023, continues, until the end of 30 June 2024, to apply instead.
- (3) To avoid doubt, a BASIX certificate issued in relation to BASIX development referred to in this section may accompany a development application or an application for a complying development certificate for the purposes of the *Environmental Planning and Assessment Regulation 2021*, sections 27(1)(a) and 131(1)(a).

[7] Schedule 1[6]

Insert after the definition of *embodied emissions*—

NABERS means the National Australian Built Environment Rating System.

[8] Schedule 2 Amendment of Environmental Planning and Assessment Regulation 2021

Insert at the end of section 35B(3)(c), as inserted by Schedule 2[3]—

, or

- (d) an assessor accredited under NABERS.

- [9] Schedule 2[3], proposed section 35C(1)**
Omit “under *State Environmental Planning Policy (Sustainable Buildings) 2022*”.
- [10] Schedule 2[3], proposed section 35C(1)(b)**
Omit section 35C(1)(b). Insert instead—
(b) development to which *State Environmental Planning Policy (Sustainable Buildings) 2022*, section 3.4 applies.
- [11] Schedule 2[3], proposed section 35D(1)**
Omit “under *State Environmental Planning Policy (Sustainable Buildings) 2022*”.
- [12] Schedule 2[3], proposed section 35D**
Insert after section 35D(3)—
(4) Subsection (2), to the extent it relates to energy use, and subsection (3) do not apply to large commercial development on land to which the following local environmental plans apply—
(a) *Sydney Local Environmental Plan 2012*,
(b) *Sydney Local Environmental Plan (Green Square Town Centre) 2013*,
(c) *Sydney Local Environmental Plan (Green Square Town Centre—Stage 2) 2013*.
(5) Despite subsection (4), subsections (2) and (3) apply to large commercial development to the extent that the development relates to prescribed serviced apartments.
- [13] Schedule 2[4], proposed section 79A(2)(a) and (b)**
Omit “by NABERS” wherever occurring. Insert instead “under NABERS”.
- [14] Schedule 2[4], proposed section 79A**
Insert after section 79A(4)—
(4A) Subsections (2)(b) and (c), (3) and (4) do not apply to large commercial development on land to which the following local environmental plans apply—
(a) *Sydney Local Environmental Plan 2012*,
(b) *Sydney Local Environmental Plan (Green Square Town Centre) 2013*,
(c) *Sydney Local Environmental Plan (Green Square Town Centre—Stage 2) 2013*.
(4B) Despite subsection (4A), subsections (2)(b) and (c), (3) and (4) apply to large commercial development to the extent that the development relates to prescribed serviced apartments.
- [15] Schedule 2[4], proposed section 79A(5), definition of “relevant period”**
Omit the definition. Insert instead—
relevant period, for a building, means 24 months from—
(a) the day on which an occupation certificate is issued, if the development requires an occupation certificate, or
(b) the day on which the building may be occupied or used, if the development does not require an occupation certificate.

[16] Schedule 2[4]

Insert after section 79A, as inserted by Schedule 2[4]—

79B Extension of relevant period for compliance with development consent condition for large commercial development

- (1) The person having the benefit of the development consent to which section 79A applies may apply to the consent authority for an extension of up to 12 months of the relevant period.
- (2) The application must be made through the NSW planning portal.
- (3) The consent authority may grant an extension only if satisfied that the extension is reasonable in the circumstances.
- (4) In deciding whether an extension is reasonable in the circumstances, the consent authority—
 - (a) must consider the following—
 - (i) whether less than 75% of the building will be occupied at the end of the relevant period,
 - (ii) whether the development is staged development,
 - (iii) the measures already taken by the applicant to comply with the development condition, and
 - (b) may consider the following—
 - (i) a change in ownership of the development,
 - (ii) delays in the construction of development that is staged development,
 - (iii) delays in relation to the purchase, surrender or obtaining of offsets,
 - (iv) other relevant matters.
- (5) A consent authority is taken to have refused an application for an extension if it has not determined the application within 30 days.

[17] Schedule 2[6]

Insert after the definition of *embodied emissions*—

large commercial development has the same meaning as in *State Environmental Planning Policy (Sustainable Buildings) 2022*.

[18] Schedule 2[6]

Insert after the definition of *NABERS*—

prescribed serviced apartments has the same meaning as in *State Environmental Planning Policy (Sustainable Buildings) 2022*.

Schedule 2 Amendment of Environmental Planning and Assessment Regulation 2021

[1] Section 27 BASIX development

Omit “lodged” from section 27(1)(a).

Insert instead “submitted on the NSW planning portal”.

[2] Section 131 BASIX development and certificates

Insert “on the NSW planning portal” after “lodged” in section 131(1)(a).

[3] Schedule 7 Dictionary

Reorder the definition of *critical industry cluster land* in alphabetical order.