



New South Wales

Environmental Planning and Assessment Further Amendment (Building Sustainability Index: BASIX) Regulation 2005

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*.

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* so as to extend the BASIX certification scheme under that Regulation to all forms of residential development (other than hotels and motels). The Regulation modifies that scheme so that, in future, a single BASIX certificate will suffice in relation to any proposed development. Currently, separate BASIX certificates are required for each dwelling comprised in any proposed development.

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 Further Amendment (Building Sustainability Index: BASIX) Regulation 2005

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Further Amendment (Building Sustainability Index: BASIX) Regulation 2005*.

2 Commencement

This Regulation commences on 1 October 2005.

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

Omit the definition of *BASIX affected building*. Insert instead:

BASIX affected building means any building that contains one or more dwellings, but does not include a hotel or motel.

[2] Clause 3, definition of “dwelling”

Insert in alphabetical order:

dwelling, in relation to a BASIX affected building, means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.

[3] Clause 3, definition of “relevant BASIX certificate”

Insert “applicable to the development when the construction certificate is issued or (in the case of a construction certificate modified under clause 148) modified” after “the replacement BASIX certificate” in paragraph (a) (ii).

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

Insert after clause 50 (1A):

- (1B) If a development application referred to in subclause (1A) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:
- (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
 - (b) to improve the thermal performance of the building.

[5] Clause 97A Fulfilment of BASIX commitments

Omit “each relevant” from clause 97A (3). Insert instead “the relevant”.

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

Insert after clause 115 (1A):

- (1AA) If an application referred to in subclause (1A) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:

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- (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
- (b) to improve the thermal performance of the building.

[7] Clause 115 (1C)

Omit “one or more BASIX certificates”. Insert instead “a BASIX certificate”.

[8] Clause 115 (1C)

Omit “appropriate BASIX certificates”.

Insert instead “the appropriate BASIX certificate”.

[9] Clause 115 (1D)

Omit “The appropriate BASIX certificates for the purposes of subclause (1C) are”.

Insert instead “The appropriate BASIX certificate for the purposes of subclause (1C) is”.

[10] Clause 115 (1D) (a) and (b)

Omit “to the extent to which any current” wherever occurring.

Insert instead “if the current”.

[11] Clause 136D Fulfilment of BASIX commitments

Omit “each relevant” from clause 136D (3). Insert instead “the relevant”.

[12] Clause 143A Special requirements for construction certificates for residential flat development

Insert after clause 143A (2):

- (3) If the development application referred to in subclause (1) was also required to be accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in subclause (2) need not be verified to the extent to which they aim:
 - (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
 - (b) to improve the thermal performance of the building.

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- [13] Clause 145 Compliance with development consent and Building Code of Australia**
Omit “each relevant” from clause 145 (1) (a1). Insert instead “the relevant”.
- [14] Clause 149 Applications for occupation certificates**
Omit “each relevant” from clause 149 (2A). Insert instead “the relevant”.
- [15] Clause 154A Special requirements for occupation certificates for residential flat development**
Insert after clause 154A (2):
- (3) If the development application referred to in subclause (1) was also required to be accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in subclause (2) need not be verified to the extent to which they aim:
 - (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
 - (b) to improve the thermal performance of the building.
- [16] Clause 154B Fulfilment of BASIX commitments**
Omit clause 154B (2). Insert instead:
- (2) A certifying authority must not issue an occupation certificate (whether interim or final) for a BASIX affected building to which this clause applies, or for any part of such a building, unless it is satisfied that each of the commitments whose fulfilment it is required to monitor in relation to the building or part has been fulfilled.
- [17] Clause 164A BASIX certificates**
Omit clause 164A (3). Insert instead:
- (3) The relevant application need only be accompanied by one BASIX certificate.
- [18] Clause 164A (4A)**
Insert after clause 164A (4):
- (4A) In the case of a development that involves the erection of a building for both residential and non-residential purposes, or the change of use of a building to both residential and non-residential

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purposes, the description referred to in subclause (4) (a) need only include information concerning the part of the development that is intended to be used for residential purposes.

[19] Clause 164A (5), definition of “sustainability”

Omit “a dwelling” and “the dwelling”.

Insert instead “proposed development” and “the development”, respectively.

[20] Clause 286A Savings and transitional provisions: introduction of BASIX scheme

Insert after clause 286A (2):

- (3) The amendments to this Regulation made by the *Environmental Planning and Assessment Further Amendment (Building Sustainability Index: BASIX) Regulation 2005* do not apply to:
 - (a) a development application, or application for a complying development certificate, that has been made before 1 October 2005, 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).

[21] Schedule 1 Forms

Insert after clause 2 (5):

- (6) In the case of development to which clause 2A applies, the explanation referred to in subclause (5) (a) need not deal with the design quality principles referred to in that paragraph to the extent to which they aim:
 - (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
 - (b) to improve the thermal performance of the building.

[22] Schedule 1, clause 2A (2)

Omit “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”.

Insert instead “must also be accompanied by a BASIX certificate for the development, being a BASIX certificate that has been issued no earlier than 3 months before the date on which the application is made”.

[23] Schedule 1, clause 4A (2)

Omit “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”.

Insert instead “must also be accompanied by a BASIX certificate for the development, being a BASIX certificate that has been issued no earlier than 3 months before the date on which the application is made”.

[24] Schedule 1, clause 6A (2)

Omit “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”.

Insert instead “must also be accompanied by a BASIX certificate for the development, being either the BASIX certificate applicable to the development when the relevant development consent was granted or some other BASIX certificate that has been issued no earlier than 3 months before the date on which the application is made”.