



# State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

[2004-396]



## Status Information

### Currency of version

Current version for 4 December 2006 to date (accessed 6 February 2012 at 10:17).  
Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical notes](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 4 December 2006.

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## Historical notes



### 1 Name of Policy

This Policy is *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

### 2 Commencement

This Policy commences on 1 July 2004.

### 3 Aim of Policy

- (1) Regulations under the Act have established a scheme to encourage sustainable residential development (*the BASIX scheme*) under which:
  - (a) an application for a development consent, complying development certificate or construction certificate in relation to certain kinds of residential development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and
  - (b) the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled.
- (2) The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.
- (3) This Policy achieves its aim by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.

### 4 Definitions

- (1) In this Policy:

***BASIX affected building*** has the same meaning as it has in the *Environmental Planning and Assessment Regulation 2000*.

***BASIX affected development*** has the same meaning as it has in the *Environmental Planning and Assessment Regulation 2000*.

***BASIX certificate*** has the same meaning as it has in the *Environmental Planning and Assessment Regulation 2000*.

***BASIX commitment*** means a commitment set out in a BASIX certificate.

***BASIX optional development*** has the same meaning as it has in the *Environmental Planning and Assessment Regulation 2000*.

***competing provision*** means a provision:

- (a) that establishes development standards, or
- (b) that requires a consent authority to have regard to, or take into consideration, any matter when considering or determining an application for a development consent, or
- (c) that requires a consent authority to be satisfied as to any matter before it grants a development consent, or
- (d) that requires a consent authority to impose a condition on a development consent, or
- (e) that affects the granting of a development consent, or the conditions on which a development consent is granted,

other than a provision that encourages, or offers incentives for, the adoption of measures beyond those required by provisions of the kind referred to in paragraphs (a)–(e).

***the Act*** means the *Environmental Planning and Assessment Act 1979*.

- (2) Notes in this Policy do not form part of this Policy.

## **5 Land to which Policy applies**

This Policy applies to the whole of the State, including Lord Howe Island.

## **6 Buildings to which Policy applies**

- (1) This Policy applies to buildings arising from the following development:

- (a) proposed BASIX affected development for which the regulations under the Act require a BASIX certificate to accompany a development application or an application for a complying development certificate or construction certificate,
- (b) proposed BASIX optional development in relation to which a BASIX certificate accompanied a development application or an application for a complying development certificate, despite the fact that the regulations under the Act did not require a BASIX certificate,
- (c) BASIX affected development and BASIX optional development the subject of a development consent, complying development certificate or construction certificate that, pursuant to the regulations under the Act, is subject to a BASIX commitment.

- (2) This Policy also applies to buildings that become BASIX affected buildings because of development of the kind referred to in subclause (1).

## **7 Relationship with other environmental planning instruments**

This Policy prevails over any other environmental planning instrument, whenever made, to the extent of any inconsistency.

## 8 Other environmental planning instruments do not apply to BASIX commitments

- (1) The competing provisions of an environmental planning instrument, whenever made, are of no effect 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 a building to which this Policy applies or in the use of the land on which such a building is situated, or
  - (b) to improve the thermal performance of a building to which this Policy applies.

**Note.** See, for example, the energy efficiency requirements set out in Schedules 4 and 5 to *State Environmental Planning Policy No 60—Exempt and Complying Development*.

- (2) If the development concerned involves:
- (a) the erection of a building for both residential and non-residential purposes, or
  - (b) the alteration, enlargement or extension of a building that is intended to be used for both residential and non-residential purposes, or
  - (c) the change of use of a building to both residential and non-residential purposes,
- subclause (1) does not displace the competing provisions to the extent to which they apply to the part of the building that is intended to be used for non-residential purposes.

## 9 Development control plans do not apply to BASIX commitments

- (1) The competing provisions of a development control plan under Division 6 of Part 3 of the Act, whenever made, are of no effect 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 a building to which this Policy applies or in the use of the land on which such a building is situated, or
  - (b) to improve the thermal performance of a building to which this Policy applies.
- (2) If the development concerned involves:
- (a) the erection of a building for both residential and non-residential purposes, or
  - (b) the alteration, enlargement or extension of a building that is used for both residential and non-residential purposes, or

(c) the change of use of a building to both residential and non-residential purposes,

subclause (1) does not displace the competing provisions to the extent to which they apply to the part of the building that is intended to be used for non-residential purposes.

## 10 Provisions providing for exceptions to development standards do not allow departures from BASIX commitments

*State Environmental Planning Policy No 1—Development Standards* does not apply to a development standard that arises, under the regulations under the Act, in connection with a BASIX commitment for a building to which this Policy applies or for the land on which such a building is situated.

## Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

## Table of amending instruments

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 published in Gazette No 104 of 25.6.2004, p 4685. This Policy has been amended as follows:

<b>2005</b> (617)	State Environmental Planning Policy (Building Sustainability Index: BASIX) Amendment Policy 2005. GG No 120 of 30.9.2005, p 7952. Date of commencement, 1.10.2005, cl 2.
<b>2006</b> (605)	State Environmental Planning Policy (Building Sustainability Index: BASIX) Amendment Policy 2006. GG No 120 of 29.9.2006, p 8510. Date of commencement, 1.10.2006, cl 2.
No 120	<u>Statute Law (Miscellaneous Provisions) Act (No 2) 2006</u> . Assented to 4.12.2006. Date of commencement of Sch 2, assent, sec 2 (2).

## Table of amendments

Cl 4	Am 2006 (605), Sch 1 [1].
Cl 5	Subst 2005 (617), Sch 1 [1].
Cl 6	Subst 2006 (605), Sch 1 [2].
Cl 8	Am 2005 (617), Sch 1 [2]. Subst 2006 (605), Sch 1 [3].
Cl 9	Am 2005 (617), Sch 1 [3]. Subst 2006 (605), Sch 1 [3].
Cl 10	Am 2005 (617), Sch 1 [4]. Subst 2006 (605), Sch 1 [3]. Am 2006 No 120, Sch 2.87.

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