



New South Wales

Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2022

under the

Environmental Planning and Assessment Act 1979

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

ANTHONY ROBERTS, MP
Minister for Planning

Explanatory note

The object of this Regulation is to amend the following Regulations in relation to the proposed *State Environmental Planning Policy (Sustainable Buildings) 2022*—

- (a) *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*,
- (b) *Environmental Planning and Assessment Regulation 2021*.

Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2022

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2022*.

2 Commencement

This Regulation commences on 1 October 2023.

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

[1] Sections 10A and 10B

Insert after section 10—

10A Embodied emissions for non-residential development under Sustainable Buildings SEPP

- (1) This section applies to an application for a construction certificate for non-residential development under *State Environmental Planning Policy (Sustainable Buildings) 2022*.
- (2) The application must disclose the amount of embodied emissions attributable to the development.
- (3) The amount disclosed under subsection (2) must be determined using—
 - (a) the form published on the NSW planning portal as in force from time to time, and
 - (b) an itemised list of building materials for the development prepared by a quantity surveyor.
Example— a bill of materials or bill of quantities
- (4) The amount disclosed under subsection (2) must be certified by—
 - (a) a quantity surveyor, or
 - (b) a qualified designer, or
 - (c) an engineer.

10B Energy and water use standards for large commercial development under Sustainable Buildings SEPP

- (1) This section applies to an application for a construction certificate for large commercial development under *State Environmental Planning Policy (Sustainable Buildings) 2022*.
- (2) The application must be accompanied by reports about the standards for energy and water use achieved by the development, taking into account the standards specified in *State Environmental Planning Policy (Sustainable Buildings) 2022*, Schedule 3.
- (3) The report for energy use must be in the form of a report under Section J of the *Building Code of Australia*.
- (4) The report for energy use may also—
 - (a) refer to a performance-based design solution under Section J of the *Building Code of Australia*, or
 - (b) incorporate a review by a member of an independent review panel under the National Australian Built Environment Rating System, known as NABERS.
- (5) The report for water use may be in the form of annotated drawings and specifications.

[2] Section 15 Design requirements for residential apartment development

Omit section 15(3)(a) and (b). Insert instead—

- (a) to reduce the consumption of mains-supplied potable water or greenhouse gas emissions related to the use of—
 - (i) the building, or
 - (ii) the land on which the building is located, or
- (b) to improve the thermal performance of the development, or
- (c) to quantify and report on the embodied emissions attributable to the development.

[3] Section 43 Design requirements for residential apartment development

Omit section 43(3)(a) and (b). Insert instead—

- (a) to reduce the consumption of mains-supplied potable water or greenhouse gas emissions related to the use of—
 - (i) the building, or
 - (ii) the land on which the building is located, or
- (b) to improve the thermal performance of the development, or
- (c) to quantify and report on the embodied emissions attributable to the development.

[4] Section 71 BASIX certificates

Omit “meet the Government’s requirements for sustainability” from section 71(3)(c).

Insert instead “achieve the standards that apply to the development under *State Environmental Planning Policy (Sustainable Buildings) 2022*, Chapter 2”.

[5] Section 71(5), definition of “sustainability”

Omit the definition. Insert instead—

sustainability of development means the extent to which the development—

- (a) reduces the consumption of mains-supplied potable water and greenhouse gas emissions related to the use of—
 - (i) the development, or
 - (ii) the land on which the development is located, and
- (b) improves the thermal performance of the development, and
- (c) quantifies and reports on the embodied emissions attributable to the development.

[6] Schedule 2 Dictionary

Insert in alphabetical order—

embodied emissions, attributable to development, 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 3 Definitions

Insert after section 3(6)—

- (7) In this Regulation, a reference to the use of on-site fossil fuels does not include a reference to the use of back-up electricity generators.

[2] Section 29 Residential apartment development

Omit section 29(3)(a) and (b). Insert instead—

- (a) to reduce the consumption of mains-supplied potable water or greenhouse gas emissions related to the use of—
 - (i) the building, or
 - (ii) the land on which the building is located, or
- (b) to improve the thermal performance of the development, or
- (c) to quantify and report on the embodied emissions attributable to the development.

[3] Sections 35B–35D

Insert after section 35A—

35B Embodied emissions for non-residential development under Sustainable Buildings SEPP

- (1) A development application for non-residential development under *State Environmental Planning Policy (Sustainable Buildings) 2022* must—
 - (a) disclose the amount of embodied emissions attributable to the development, and
 - (b) describe the use of low emissions construction technologies in the development.
- (2) The amount disclosed under subsection (1)(a) must be determined using—
 - (a) the form published on the NSW planning portal as in force from time to time, and
 - (b) an itemised list of building materials for the development prepared by a quantity surveyor.
Example— a bill of materials or bill of quantities
- (3) The amount disclosed under subsection (1)(a) must be certified by—
 - (a) a quantity surveyor, or
 - (b) a qualified designer, or
 - (c) an engineer.

35C Net zero statement for non-residential development under Sustainable Buildings SEPP

- (1) This section applies to a development application for the following development under *State Environmental Planning Policy (Sustainable Buildings) 2022*—
 - (a) large commercial development,

- (b) non-residential development that is State significant development specified in *State Environmental Planning Policy (Planning Systems) 2021*, Schedule 1, sections 13–15.
- (2) The development application must include evidence that the development—
 - (a) will not use on-site fossil fuels after the occupation and use of the development commence, or
 - (b) incorporates the infrastructure, or space for the infrastructure, necessary for the development to not use on-site fossil fuels after 1 January 2035.
Note— Infrastructure includes plant, equipment and ventilation.
- (3) The development application must include details of the following—
 - (a) any renewable energy generation and storage infrastructure forming part of the development,
 - (b) passive and technical design features that minimise energy consumption by users of the development.
- (4) The development application must include the following information if available—
 - (a) the estimated annual energy consumption for the building in kilowatt hours per square metre of floor area,
 - (b) the estimated amount of emissions relating to energy use in the building, including direct and indirect emissions.
- (5) The evidence and information required to be included in a development application under this section must be certified by a mechanical or electrical engineer.

35D Energy and water use for large commercial development under Sustainable Buildings SEPP

- (1) This section applies to a development application for large commercial development under *State Environmental Planning Policy (Sustainable Buildings) 2022*.
- (2) The development application must be accompanied by a copy of a NABERS commitment agreement that demonstrates the development is capable of achieving the standards for energy and water use specified in *State Environmental Planning Policy (Sustainable Buildings) 2022*, Schedule 3.
- (3) The development application must identify the method under Section J of the *Building Code of Australia* that will be used to demonstrate the development is capable of achieving the standards for energy use specified in *State Environmental Planning Policy (Sustainable Buildings) 2022*, Schedule 3.

[4] Section 79A

Insert after section 79—

79A Energy and water use for large commercial development under Sustainable Buildings SEPP

- (1) This section applies to a development consent for large commercial development under *State Environmental Planning Policy (Sustainable Buildings) 2022*.
- (2) It is a condition of the development consent that, within the relevant period, the following must be given to the consent authority using the NSW planning portal—

- (a) an assessment of the NABERS rating for water use achieved by the development, prepared by an assessor accredited by NABERS,
 - (b) an assessment of the NABERS rating for energy use achieved by the development, prepared by an assessor accredited by NABERS,
 - (c) evidence that the offsets required for the development under this section have been—
 - (i) for ACCUs or large-scale generation certificates—purchased and surrendered, or
 - (ii) for Climate Active certification—obtained.
- (3) The assessment under subsection (2)(b) must specify the following—
 - (a) the rated annual electricity use,
 - (b) if the development will not achieve the energy use standards—the difference between the rated annual electricity use and the energy use standards, calculated for the first 5 years of operation,
 - (c) the rated use of on-site fossil fuels and the associated amount of carbon dioxide measured as carbon dioxide equivalent or CO₂e, calculated for the first 10 years of operation.
- (4) The consent authority must determine—
 - (a) the type of offsets required for particular development according to the following—
 - (i) ACCUs or Climate Active certification may be required if the consent authority is satisfied the development will use on-site fossil fuels,
 - (ii) large-scale generation certificates may be required if the consent authority is satisfied the development will not achieve the energy use standards, and
 - (b) the number of offsets required for particular development, using the assessment provided under subsection (2)(b).
- (5) In this section—

ACCU means an Australian Carbon Credit Unit issued by the Clean Energy Regulator under the *Carbon Credits (Carbon Farming Initiative) Act 2011* of the Commonwealth.

Climate Active certification means Climate Active certification under the Climate Active Carbon Neutral Standard for organisations, buildings or precincts.

energy use standards means the standards for energy use specified in *State Environmental Planning Policy (Sustainable Buildings) 2022*, Schedule 3.

large-scale generation certificate means a large-scale generation certificate created under the *Renewable Energy (Electricity) Act 2000* of the Commonwealth.

offset means an ACCU, Climate Active certification or a large-scale generation certificate.

relevant period means 24 months from the day on which an occupation certificate is issued for the development.

[5] Section 102 Modification applications for residential apartment development consents

Omit section 102(3)(a) and (b). Insert instead—

- (a) to reduce the consumption of mains-supplied potable water or greenhouse gas emissions related to the use of—
 - (i) the building, or
 - (ii) the land on which the building is located, or
- (b) to improve the thermal performance of the development, or
- (c) to quantify and report on the embodied emissions attributable to the development.

[6] Schedule 7 Dictionary

Insert in alphabetical order—

embodied emissions, attributable to development, has the same meaning as in *State Environmental Planning Policy (Sustainable Buildings) 2022*.

NABERS means the National Australian Built Environment Rating System.