



Environmental Defenders Office

24 October 2023

James Conlan
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By post and email: james@350.org.au

Dear Mr Conlan

Further advice on Electrify your Council campaign

You have requested further advice to clarify key issues being raised by Councils in relation to your campaign to electrify your Council. We have responded below to your additional questions.

1. Does BASIX continue to be fuel agnostic since it was updated after 1 October 2023?

In summary BASIX continues to be fuel agnostic and does not specify whether gas appliances are required or not required in new developments. However, while the amendments to BASIX still allows for choice, there is an overall move toward electrification of buildings.

On 1 October 2023, updates were made to BASIX, which corresponded with the commencement of the Sustainable Buildings SEPP and the changes to the National Construction Code. In summary those changes incorporated changes to the thermal performance of buildings, the NSW electricity grid factor to be used in electricity calculations, new technology options, and the introduction of an embodied emissions calculation.

Section J of the National Construction Code 2022, establishes the following objectives:

1. Reduce the energy consumption and energy peak demand of key energy using equipment;
2. Reduce the greenhouse gas emissions that occur because of a building's energy consumption and energy source;
3. Improve occupant health and amenity by mitigating the impact of extreme hot and cold weather events and energy blackouts ;
4. Be able to accommodate the future installation of renewable energy systems, batteries and electric vehicle charging.

In NSW, BASIX is used to demonstrate compliance with many of the Section J requirements.

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BASIX energy targets from 1 October 2023 are based on three components:

1. The type of building and its location, including new categories for Class 2 buildings based on the number of storeys.
2. The new grid electricity factor used in BASIX which is 37% lower than previous versions to reflect the projected decarbonisation of the NSW electricity grid.
3. Increasing the energy performance stringency to align with NCC 2022 Section J energy efficiency requirements.

In discussing energy efficiency, BASIX uses the efficiency of systems and equipment, such as energy ratings of appliances, in the calculation of energy consumption. While it does not provide for the removal of gas, the supporting material makes clear that gas is not consistent with reducing emissions. A Comprehensive guide to BASIX updated in September 2023 provides the following infographic to discuss steps to reduce energy consumption.

To reduce energy consumption and associated GHG emissions there are 5 key steps:

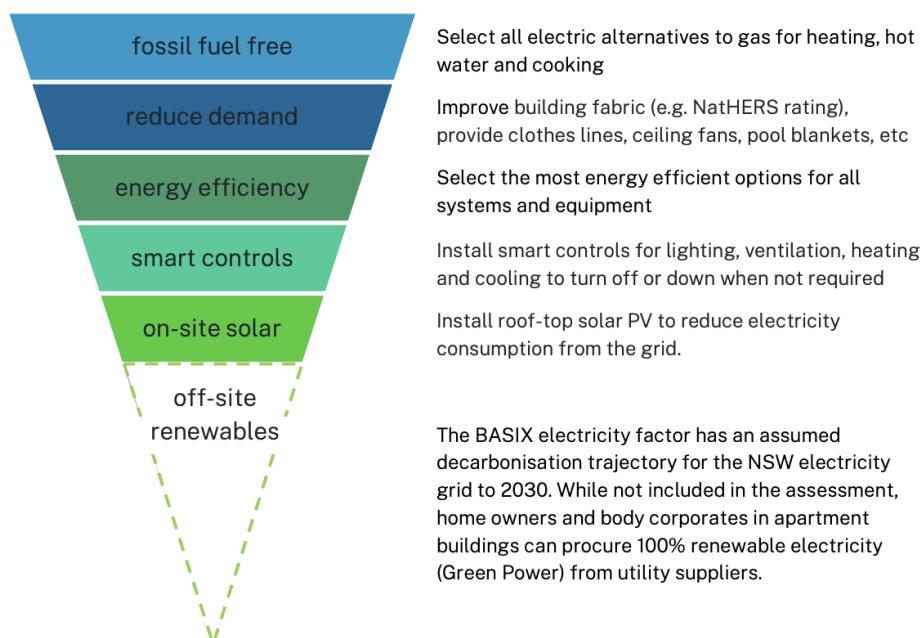


Figure 8 Five steps to reduce energy consumption and associated greenhouse gas emissions

In discussing domestic hot water energy saving tips BASIX provides "select the most efficient type of heat generator. This is typically electric heat pumps."¹

2. Does the revised Sustainable Buildings SEPP prohibit councils from banning gas appliances in new non-residential development applications?

As BASIX does not apply to non-residential development (section 2.2(2)(a)), there is not a similar provision in relation to competing provisions. The SEPP provides the minimum requirement which enables councils to apply higher standards. Traditionally, there have been specific exemptions to allow City of Sydney to apply higher standards in the CBD and Green Square. However ALL

¹ https://shared-drupal-s3fs.s3.ap-southeast-2.amazonaws.com/master-test/fapub_pdf/NSW+Planning+Portal+Documents/A+comprehensive+guide+to+BASIX+-+September+2023.pdf

councils can apply higher standards, including prohibiting gas appliances, in relation to non-residential buildings if they wish. This remains the case with the new Sustainable Buildings SEPP as set out in the earlier advice.

Chapter 3 of the Sustainable Buildings SEPP sets out the standards for non-residential buildings.

Section 3.2 provides that in deciding whether to grant consent, the consent authority must consider whether the development is designed to enable:

...

(b) a reduction in peak demand for electricity, including through the use of energy efficient technology,

...

(d) the generation and storage of renewable energy.

Further, the consent authority must consider whether the development minimised the use of on-site fossil fuels, as part of the goal of achieving net zero emissions in NSW by 2050 (section 3.3(1)).

3. Does the revised Sustainable Buildings SEPP prohibit councils from banning gas appliances in new residential development applications?

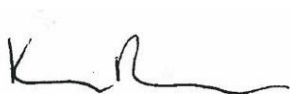
The advice provided in July 2023 discussed the Sustainable Buildings SEPP that has just come into force as of 1 October 2023, therefore that advice is still current and applicable. It is our opinion that councils can continue to prohibit the installation of gas appliances in new residential developments through the use of health and economic justifications to avoid inconsistency with the Sustainable Buildings SEPP.

4. Is Lane Cove Council's new DCP consistent with the revised Sustainable Buildings SEPP and BASIX?

You understand that the Lane Cove model is consistent with the Sustainable Buildings SEPP because the council's stated objectives of the anti-gas provisions of the new DCP are to improve indoor and outdoor air quality (health), and to reduce energy costs to occupants (economic). The use of both of these objectives allows Lane Cove Council to incorporate hot water heating units in its gas ban, going beyond the Waverley model of only restricting indoor gas appliances to new residential developments via the health ground. We confirm that the new Lane Cove DCP is consistent with the Sustainable Building SEPP on that basis and can be used as a model for electric buildings going forward.

Yours sincerely,

Environmental Defenders Office



Kirsty Ruddock

Managing Lawyer- Safe Climate (Corporate and Commercial)