



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 31 May 2004*

Time: *6.00pm*

Outline Of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Delegated Authority (“D” Items):

- To require such investigations, reports or actions as considered necessary in respect of matters contained with the Business Agendas (and as may be limited by specific Council resolutions).
- Confirmation of Minutes of its Meeting.
- Any other matter falling within the responsibility of the Urban Planning Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed below:

Recommendation only to the Full Council (“R” Items):

- Such matters as are specified in Section 377 of the Local Government Act and within the ambit of the Committee considerations.
- Broad strategic matters, such as:-
 - Town Planning Objectives; and
 - major planning initiatives.
- Matters not within the specified functions of the Committee.
- Matters requiring supplementary votes to Budget.
- Urban Design Plans and Guidelines.
- Local Environment Plans.
- Residential and Commercial Development Control Plans.
- Rezoning applications.
- Heritage Conservation Controls.
- Traffic Management and Planning (Policy) and Approvals.
- Commercial Centres Beautification Plans of Management.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters reserved by individual Councillors, in accordance with any Council policy on "safeguards" and substantive changes.

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

27 May 2004

To: The Mayor, Councillor Rundle, ex-officio
Councillor David Shoebridge (Chair)
Anthony Boskovitz
John Comino
Christopher Dawson
Keri Huxley
Julian Martin
Isabelle Shapiro

Dear Councillors

Urban Planning Committee Meeting – 31 May 2004

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Monday 31 May 2004 at 6.00pm.**

Gary James
General Manager

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 17 May 2004	1
----	--	---

Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Draft State Environmental Planning Policy (Application of Development Standards) 2004 and Associated Draft Planning Guideline – 696.G	2
R2	Building Sustainability Index (Basix) – 696.G	30

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 17 May 2004**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 17 May 2004 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Urban Planning Committee Meeting of 17 May 2004 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council

Subject: **Draft State Environmental Planning Policy (Application Of Development Standards) 2004 And Associated Draft Planning Guideline**

Author: Chris Bluett - Manager Strategic Planning

File No: 696.G

Reason for Report: To inform Council about the public exhibition of Draft State Environmental Planning Policy (Application of Development Standards) 2004, its associated Draft Planning Guideline and the proposed repeal of State Environmental Planning Policy No.1 - Development Standards.

Recommendation:

That a submission on Draft SEPP (Application of Development Standards) 2004 and the associated Draft Planning Guideline be made to the Department of Infrastructure, Planning and Natural Resources incorporating the following comments:

- (a) Support in general for the Draft SEPP and Draft Planning Guideline.
- (b) A need for further consideration to the issue of “better environmental planning outcome” and to the criteria for demonstrating such an outcome, given the examples that arise in Woollahra with minor development and minor departures.
- (c) Clarification of the information that a council should maintain under clause 12 of the Draft SEPP. In this regard whether the information listed under the heading in the Draft Guidelines “monitoring and plan review” should relate to clause 12, not clause 11.
- (d) A request that the Guideline be amended by removing reference to variation of development standards through use of an objection under the policy.

1. Introduction

The Department of Infrastructure, Planning and Natural Resources (DIPNR) has placed *Draft State Environmental Planning Policy (Application of Development Standards) 2004* (the Draft SEPP) on public exhibition from 10 May 2004 to 18 June 2004. A supporting Draft Planning Guideline for the Draft SEPP is also on public exhibition. Copies of the Draft SEPP and Draft Planning Guideline are provided as **annexures 1 and 2** to this report.

It is intended that the Draft SEPP, when gazetted, will replace *State Environmental Planning Policy No.1 – Development Standards* (SEPP No.1)

2. Background

2.1 The origin of SEPP No.1

Prior to SEPP No.1, where a consent authority was in favour of a development proposal but could not grant consent to a development application because the proposal failed to comply with one or more development standards (such as a floor space ratio or height control), an amendment was required to the environmental planning instrument applying to the land. This practice resulted in a multitude of “spot” changes to planning instruments, which, although generally of a minor nature, added many months to the development assessment process.

SEPP No.1 was introduced in October 1980 with the aim of providing flexibility in the application of development standards and consequently a streamlining of the development assessment process. Clause 3 of SEPP No.1 states:

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.

A number of actions and requirements must be undertaken and fulfilled when SEPP No.1 is used.

1. The development application must be supported by a written objection that states that compliance with the relevant development standard is unreasonable or unnecessary in the circumstances.
2. The grounds of the objection must be stated.
3. The consent authority must be satisfied that the objection is well founded.
4. The consent authority must be of the opinion that granting consent to the application is consistent with the aims of SEPP No.1 (as stated in clause 3).
5. The consent authority must obtain the concurrence of the Director-General before a consent involving SEPP No.1 is granted. This concurrence has been delegated to councils.

Since its inception over twenty years ago, the use of SEPP No.1 in the development assessment process has raised many questions and concerns in the development industry, in local communities and in local government. Additionally, the contentious nature of SEPP No.1 has resulted in a substantial number of appeals in the Land and Environment Court. Consequently, the Court's decisions have provided a major influence on the interpretation and application of the policy.

It has been established by a series of decisions in the Land and Environment Court that in order to maintain an objection that compliance with a standard is unreasonable or unnecessary, it is first necessary to discern the underlying objective or purpose of the standard. For an objection to be well-founded it has then been necessary to satisfy the Court that compliance with the standard is unnecessary or unreasonable in the circumstances of the case. Although the court has urged a generous application of SEPP No.1, and has repeatedly declined to exhaustively define the limits of SEPP No.1 and, in particular, what is embraced by the expression "circumstances of the case", it is now established that it is not sufficient merely to point to what is described as an absence of environmental harm for an objection to be well-founded. Furthermore, the objection is not advanced, by an opinion that the development standard is inappropriate in respect of a particular zoning.

2.2 Council's SEPP No.1 procedure

Using the principles set out the case of *Hooker Corporation Pty Limited v Hornsby Shire Council* (NSWLEC, 2 June 1986, unreported), the Council's Planning and Development Division uses procedure to achieve a consistent approach to the assessment of SEPP No.1 objections. The procedure requires all development application assessment reports to assess SEPP No.1 objections by reference to the following tests:

1. Is the planning control in question a development standard?
2. What is the underlying purpose of the standard?
3. The objectives of WLEP 1995 are set out in clause 2. You must also refer to specific objectives where set out in the plan, eg.

clause 10A - Objectives of site area and site frontage standards for residential flat buildings
clause 11AA - Objectives of floor space ratio standards
clause 12AA - Objectives of maximum building height development standards
clause 22AA - Objectives of foreshore building line standards
4. Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in section 5(a)(1) and (2) of the *Environmental Planning and Assessment Act 1979*?
5. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?
6. Is the objection well founded?

Subject to these tests being satisfied and all other aspects of the development proposal being acceptable when assessed against relevant statutory and policy provisions, the Council may grant consent to the development application.

It should be noted that in granting consent the Council does not vary a development standard, but allows development that departs from the standard to be carried out. Subsequent proposals for the site that depart from a standard must be supported by new objections under SEPP No.1.

2.3 Review of SEPP No.1

In 2000 the Department of Urban Affairs and Planning (now DIPNR) commissioned researchers from the Planning and Urban Development Program in the Faculty of the Built Environment at the University of New South Wales to carry out a review of SEPP No.1. The research team was overseen by a steering committee of senior officers from DUAP.

The aims of the review were to:

- *Examine the underlying purpose of State Environmental Planning Policy No. 1 - Development Standards.*
- *Determine how the "industry" (users of the Policy and other affected parties) and the community perceive the current operation of SEPP No.1.*
- *Analyse how SEPP No.1 has been interpreted and how it currently operates.*
- *Investigate how flexibility of planning standards is achieved (if at all) in other relevant jurisdictions.*

Various research methods were used to obtain quantitative and qualitative data for the review. These methods included:

- Questionnaires to planners and councillors in all NSW councils, and to representative samples of developers, consulting planners, environmental lawyers and State agency planners.
- Focus group meetings with local government planners, developers, consulting planners and DUAP staff.

- Analysis of Land and Environment Court and Court of Appeal decisions relating to SEPP No.1 matters.
- Research into the way in which development standards are administered and enforced in other Australian states and territories and internationally.
- Contact with key environmental lawyers and academics in NSW.

In July 2001, DUAP released a discussion paper that contained the review's findings. A proposed amendment to SEPP No.1 was also released. The key findings of the review appeared under two headings: "Problems with SEPP 1" and "Advantages of SEPP 1". In summary these findings were:

Problems with sepp no.1

- Lack of political support due to loss of certainty in decision making and discomfort with merit-based assessment.
- Inconsistent use by councils.
- Contradictory planning approaches being advocated by DUAP - prescription based development standards and SEPP No.1 versus performance based controls in DCPs.
- Poor community understanding of SEPP No.1.
- Policy being used in some cases where it may be more appropriate to include flexibility for standards within the environmental planning instrument.
- SEPP No.1 used to circumvent LEP amendments. This was identified in rural subdivisions.
- Repeated use of SEPP No.1 on the same property.
- Aims of SEPP No.1 are not clear.
- Lack of guidelines.
- Use of SEPP No.1 as a pseudo-strategic planning tool.
- Over use of SEPP No.1 by some councils.
- Confusion over whether a planning control is a development standard or a prohibition.
- SEPP No.1 seen as a "given right" for and by developers.

Advantages of sepp no.1

- Flexibility for development.
- Simplicity and ease of applying SEPP No.1.
- Allowance for merit-based assessment of development that does not comply with standards.
- Better design outcomes and innovation resulting from flexibility and merit-based assessment.
- Seen as an accepted means of assessing development that does not comply with standards.
- Provides an alerting mechanism for review of planning instruments where regular use of the Policy for a standard occurs.
- Reduces the need for "spot LEP amendments".
-

2.3 Council's submission on discussion paper and draft SEPP amendment

A detailed response to the discussion paper and proposed draft SEPP amendment was prepared and submitted to DUAP in September 2001. In summary the submission:

- Welcomed the review.
- Supported the retention of SEPP No.1.
- Suggested that the amendments to SEPP No.1 be altered by:
 - removing the broad reference to consideration against the aims and objectives of an environmental planning instrument and inserting consideration against the specific aims and objectives of relevant development standards;
 - providing a cross reference to the proposed SEPP No.1 best practice notes;

-
- including a provision that enables exemption from SEPP No.1 in those cases where a consent authority can justify to DUAP that the application of the policy would be inappropriate or superfluous;
 - including a statement which explains that an objection to compliance with a standard does not in itself guarantee favourable consideration by a consent authority or that non-compliance is "of right" because SEPP No.1 exists;
 - clarifying that there may be non-compliances with multiple development standards and that objections need to be submitted for each non-compliance.
-
- Supported the preparation of plain English practice notes and suggests that all references to "guidelines" being removed.
 - Supported the practice that the onus of proof must be placed back on the applicant to demonstrate full compliance with SEPP No.1.
 - Did not support the mandatory advertising of all development applications that contain SEPP No.1 objections.
 - Indicated the Council's preference for placing key development controls in LEPs as development standards.
 - Supported the use of a comprehensive education strategy in order to provide stakeholders with a good understanding of SEPP No.1.
 - Did not support publication of SEPP No.1 figures in DUAP's annual report or in any other document unless full qualification on how the policy was used is provided.
 - Highlighted the current difficulty in obtaining suitably qualified and experienced strategic planners and assessment officers.
 - Highlighted the resource constraints under which councils operate.
 - Supported the inclusion of the discussion paper in the current review of development application appeals to the Land and Environment Court.
 - Identified the common misconception that the use of SEPP No.1 varies development standards.
 - Highlighted the fragmented review process whereby a large proportion of recommendations are to be implemented in a forthcoming set of "guidelines/practice notes" or are to be discussed with government agencies.

3. The Draft SEPP

The Draft SEPP (**annexure 1**) has a number of key features that are summarised below.

Better environmental planning outcomes and public interest (clauses 3 and 7)

The Draft SEPP focuses on allowing flexibility in the application of development standards but only where the achievement of a better environmental planning outcome can be demonstrated and where the proposed development is in the public interest. Measures for determining a better environmental outcome and establishing that a proposed development is in the public interest are provided in the Draft SEPP and in the associated Draft Planning Guideline.

This is a major change that directly responds to criticisms about the use of the current policy. It is also a change that responds to comments from the court about objections based solely on a view that there will be no environmental harm.

However, whilst these provisions have merit at first glance, it is questionable whether the policy under its proposed construction can be effectively used for minor departures from standards for more common development scenarios or for minor departures in general.

In the case of Woollahra minor departures occur regularly for a number of reasons. First, most development standards are general in nature rather than tailor-made controls that apply to an individual site or a number of sites. Second, Woollahra has a varied topography of flat and sloping lands over which these general standards are applied. Third, being an established inner city area, many existing buildings exceed the standards to varying degrees. Consequently, it is common for development proposals to exceed certain development standards whilst at the same time satisfying the environmental objectives of the relevant zone and standards.

Under such circumstances either compliance or non-compliance with a standard may not produce tangible differences. Therefore, it would be extremely difficult for an applicant to demonstrate that a proposal would “result in a better environmental planning outcome than that which could have been achieved on the site had the standard been complied with” (clause 7(2)(a)).

Using a small proposal for alterations and additions on land in Vaucluse or Bellevue Hill it can be seen that the criteria for establishing a better environmental outcome would not be particularly helpful because:

- Sloping land in these areas does not represent an “unusual site characteristic” (clause 7(3)(a)).
- The minor nature of the development works generally would not represent “exceptional design quality (clause 7(3)(b)(i)); or be of any social or economic benefit to the local or broader community (clause 7(3)(b)(ii) and (iii)).

In view of these comments it is suggested that DIPNR give further consideration to the issue of “better environmental planning outcome” and to the criteria for demonstrating such an outcome.

Onus on applicant (clause 7)

There is a clearly stated statutory responsibility imposed on applicants and designers to look beyond the site of the development proposal and beyond the personal and economic gains that are sought or may result arise from a development. Furthermore, by requiring applicants to submit a written statement that addresses specific issues, the Draft SEPP and Draft Planning Guidelines will provide a transparent process that is open to public scrutiny.

Exclusion of the policy from complying development and certain development standards (clause 5)

The policy will not apply to complying development, the Building Code of Australia (BCA) or to standards in or adopted by the BCA.

Recognition of planning instruments that limit application of the policy (clause 6)

The Draft SEPP recognises existing planning instruments that limit or exclude the application of SEPP No.1 and maintains these arrangements. For example, the gross floor area development standard applying to the Kiaora Lands site in Double Bay is not subject to SEPP No.1, an arrangement that would be kept under the new policy.

Limited application of the policy for subdivision in rural and environmentally restricted zones (clause 8)

The Draft SEPP’s use in development applications for subdivision purposes is limited in rural zones and certain environmentally restricted zones so that departures from subdivision standards do not exceed 10% or, in some cases, do not result in a two or more substandard allotments. This provision is not relevant to Woollahra as the zone and area descriptors set out in the policy are not contained in environmental planning instruments that currently apply to Woollahra.

Recording of consents (clause 11)

Consent authorities will need to record their merit assessments of proposed developments made under section 79C of the Environmental Planning and Assessment Act 1979. They are also required

to record their assessment of an applicant's written statement made under the policy. In Woollahra's case these records are currently contained in the development assessment reports. Some minor changes to report templates and conditions of consent will need to be carried out to incorporate the detail required in applicant's statements.

Recording of information relating to the use of the policy for the purpose of reviewing local environmental plans (clause 12)

The Draft SEPP requires councils to make and maintain a record of such information that is specified in the Guideline. The Guideline contains a list of information, but links the requirement to clause 11, which may be a typographical error.

Repeal of SEPP No.1 and saving and transitional provisions (clauses 13 and 14)

The Draft SEPP will repeal SEPP No.1. Despite the commencement of the new policy, certain development applications will be considered under SEPP No.1 through the application of savings and transitional provisions.

Expiry of the new policy (clause 12)

The new policy will expire four years after the date of commencement. DIPNR has not indicated whether the policy will be renewed. Some explanation on this issue is contained in The Draft Planning Guideline.

4. The Draft Planning Guideline

The Draft Planning Guideline is a mixture of explanatory notes, discussion on good planning practice and statements that elaborate on requirements set down in the Draft SEPP. In the latter case, by specific cross-references within the Draft SEPP, the Guideline obtains an elevated status because it must be used or taken into consideration at particular times. This occurs for the purpose of determining whether the proposed development achieves a better environmental planning outcome (clause 7) and, secondly, for the purpose of recording information (clause 12).

In regard to the expiration clause within the Draft SEPP, the Guideline promotes DIPNR's desire to pursue a greater flexibility in the planning system, particularly through local plans. DIPNR indicates that it will provide models to assist councils in developing flexible provisions in local plans. Within the life span of the SEPP, councils that review current LEPs, or prepare new plans with flexible provisions appropriate to local conditions, will be able to seek exemption from the SEPP.

5. Response to Council's submission of 2001

Both the Draft SEPP and Draft Planning Guideline have been examined against the Council's 2001 submission. Most of the matters raised in the Council's submission have been addressed. One matter, however, has not been satisfactorily reviewed. The Draft Planning Guideline has maintained a statement about variation of development standards through use of the policy (pp.2-3). This is incorrect. A development standard is not changed or altered or is a new standard created by the use of the policy. The Draft SEPP provides the correct interpretation, being that an applicant seeks consent for a development proposal that departs from a standard.

6. Further submission to DIPNR on Draft SEPP and Draft Planning Guideline

A submission should be made to DIPNR incorporating the following comments:

- Support in general for the Draft SEPP and Draft Planning Guideline.

- A need for further consideration to the issue of “better environmental planning outcome” and to the criteria for demonstrating such an outcome, given the examples that arise in Woollahra with minor development and minor departures.
- Clarification of the information that a council should maintain under clause 12 of the Draft SEPP. In this regard whether the information listed under the heading in the Draft Guidelines “monitoring and plan review” should relate to clause 12, not clause 11.
- A request that the Guideline be amended by removing reference to variation of development standards through use of an objection under the policy.

7. Implications for Woollahra

7.1 Review of Woollahra LEP 1995

Woollahra LEP 1995 contains development standards for:

- Allotment sizes for the erection of a dwelling-house.
- Site area and site frontage for residential flat buildings.
- Floor space ratios for residential flat buildings and buildings in commercial zones.
- Height of buildings.
- Provision of public car parking spaces on certain lands in Double Bay (Cross Street car park, former depot site and Kiaora Lane/Anderson Street car park).
- Development on 9 Cooper Park Road, Rose Bay Centre, part of 13 Albert Street, 188 Oxford Street, Paddington (former Royal Hospital for Women site), 103 Darling Point Road (Babworth House).
- Foreshore building lines.
- Site area and site frontage for detached dual occupancy development.
- Building height and gross floor area for detached dual occupancy development.

The following actions will be required:

- Review the wording for all development standard provisions to establish whether they are a standard or a prohibition (see p.2 of Draft Planning Guideline). Amend where necessary.
- Review the current objectives for development standards to establish whether they clearly identify the desired planning outcome. Amend where necessary.
- Provide objectives for current development standards where those objectives are absent.
- Remove provisions for concurrence from the Director-General (these will no longer apply under the new SEPP).

7.2 Development assessment process

The SEPP and Guideline will impose additional obligations and requirements on both applicants and Council. Applicants who seek consent for a proposal that will depart from a standard will need to provide a detailed written statement supporting their application.

For Council, the following actions and additional function will be required:

- Modify all relevant application forms, checklists, brochures, guides and report templates.
- Prepare new conditions of consent.
- Amend the current procedure for SEPP No.1.
- Carry out additional checks at the receipting and preliminary assessment stages for applications to ensure that appropriate documentation is submitted.
- Provide statements in the relevant application reports to demonstrate assessment under clause 7 of the SEPP.

- Establish a register regarding the use of the policy incorporating information listed in the Planning Guideline.
- Regularly monitor the use of the SEPP.

8. Conclusion

Significant and necessary changes have been made to the first draft policy released for comment in 2001. The current Draft SEPP and Draft Planning Guideline now establish firm requirements and responsibilities for applicants and consent authorities. There is a clear intention to place a greater onus on applicants to justify departures from standards, but perhaps in the first instance to investigate design options that satisfy the standards.

Despite these changes it is questionable whether the policy is now too strict in the case of minor works or minor departures in general.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

ANNEXURE

1. Draft State Environmental Planning Policy (Application of Development Standards) 2004.
2. Department of Infrastructure, Planning and Natural Resources, 2004, Draft Planning Guideline: State Environmental Planning Policy (Application of Development Standards) 2004

Item No: R2 Recommendation to Council
Subject: **Building Sustainability Index (BASIX)**
Author: Chris Bluett - Manager Strategic Planning
File No: 696.G
Reason for Report: To inform Council about the introduction of the new State legislation and policy for sustainable residential development.

Recommendation:

That Council note the phased introduction of BASIX (the Building Sustainability Index) commencing on 1 July 2004.

1. Background

The New South Wales State Government has launched a package of proposed legislation and a draft web-based planning design tool, known as BASIX (the Building Sustainability Index). These measures follow announcements made by the Government in 2003 to establish water consumption and greenhouse gas emission reduction targets, and thermal performance requirements for new homes in NSW.

BASIX assesses the potential performance of certain types of prescribed residential development against a range of prescribed sustainable indices. The aim is to ensure that the prescribed new residential development meets the prescribed indices target.

The following sustainability targets have been set for new homes:

- From 1 July 2004 in thirty-eight Sydney Local Government Areas and from 1 July 2005 in the remainder of NSW – 40% reduction in potable (drinkable) water consumption and 25% reduction in greenhouse gas emissions compared to existing dwellings of the same type.
- From 1 July 2006 – 40% reduction in greenhouse gas emissions.

DIPNR claims that:

The implementation of the prescribed targets will result in a cumulative reduction in water consumption of 182,000 mega litres and a cumulative reduction in greenhouse gas emissions of 8.3 million tonnes over the next 10 years. [The] reductions will equate to respective savings of \$182 million and \$41.5 million to consumers across NSW. Combined water and energy savings for an average family living in a home certified by BASIX compared with an electric household are also likely to be in the order of \$300 - \$500 a year. (DIPNR Draft Practice Note 1: An overview of BASIX, p..2)

Through the proposed legislation, BASIX will become a mandatory component of the development assessment process in NSW for certain types of housing (see section 2.1 below).

The draft regulatory scheme for BASIX and the draft BASIX web-based assessment tool are on public exhibition from 1 May 2004 to 31 May 2004. The following explanatory material is also on public exhibition:

- Sample BASIX certificate.
- Draft BASIX commitments – a table showing the range of commitments that could appear in a certificate.
- Sample BASIX design guidelines for rainwater tanks.
- Draft calculation methods used in the draft BASIX assessment tool.
- Draft BASIX stormwater technical manual

The Department of Infrastructure, Planning and Natural Resources (DIPNR) has produced a set of nine draft practice notes about BASIX and a flow chart showing how BASIX operates within the development assessment process (**annexures 1 – 10**). This material and the draft assessment tool may be accessed at the BASIX website www.basix.nsw.gov.au.

2. The BASIX tool

2.1 Application and implementation

Implementation of BASIX will occur throughout NSW in stages, commencing on 1 July 2004 in thirty-eight Sydney Metropolitan Local Government Areas (known as the “initial BASIX area”). Under the first stage, a BASIX certificate will be required for the construction of a new prescribed building, known as a “BASIX affected building”, or a change of building use where the building becomes a BASIX affected building. A certificate will not be required for alterations, enlargement or extensions. A BASIX affected building is defined in the proposed legislation as:

- (a) a dwelling-house (that is, a building comprising one dwelling and nothing else), or
- (b) a dual occupancy building (that is, a building comprising 2 dwellings and nothing else), or
- (c) a guest house, boarding house, lodging house or hostel (including a backpackers hostel), being a building with a gross floor area of less than 300 square metres.

For these buildings a BASIX certificate must be lodged with the following applications:

- an application for development consent
- an application to modify a development consent
- an application for a complying development certificate
- an application for an occupation certificate.

DIPNR’s practice notes mention that from 1 October 2004 a BASIX certificate must also be lodged with applications in the “initial BASIX area” for new multi-dwelling development. This development includes villas, townhouses, and residential flat buildings. Further amendments to the Regulation and an amendment to the SEPP will be required to facilitate this extension of BASIX. *Draft Practice Note 8: Consent Authorities and the BASIX Process* mentions that the staged introduction of BASIX is intended to allow developers additional time to design more complex residential proposals so that they satisfy the mandatory sustainability targets.

From 1 July 2005, BASIX will apply to all new residential development proposals in the remainder of NSW. This includes BASIX affected buildings, as currently defined in the Regulation amendment and draft SEPP and new multi-dwelling development listed above. The later commencement date for areas outside Sydney is proposed to enable time to install climatic and other data into the assessment tool.

Whilst there are no provisions in the proposed legislation, the practice notes also mention that from 1 October 2005, BASIX will apply to alterations to existing residential development throughout NSW. This extension will require additional amendments to the Regulation and SEPP.

BASIX will not apply to commercial or industrial development at this stage.

2.2 Components

2.2.1 Sustainability assessment

BASIX is promoted by DIPNR as a self-assessment tool that is to be used by applicants and other people associated with the design of residential development proposals. An outline of the BASIX tool is provided in DIPNR's *Draft Practice Note 2: About the BASIX tool (annexure 2)*. The practice note explains how the tool has been developed, how it operates and how it will be maintained. Some of the key features of the tool are:

- There are currently five sustainability indices used in the assessment tool – water, energy, thermal comfort, landscape and stormwater.
- At present mandatory performance targets are prescribed for water, energy and thermal comfort.
- No targets are set for the landscape and stormwater indices. However, information on these indices is required to assist with the assessment for water.
- A set of help notes is provided to assist and guide users with their data input.
- An applicant can partially complete data input, save the assessment and return to finalise entry at a future date.
- After all relevant information about a development proposal has been entered and validated, and the water, energy and thermal comfort targets have been met, the tool will generate and issue a BASIX certificate.
- A new certificate can be obtained if a proposal is amended.
- Data is to be stored for all proposals for which a certificate is issued.

2.2.2 Certificate

Subject to passing the sustainability assessment process, which includes selection by the applicant of sufficient commitments (from the range offered by the BASIX tool - see annexure 11) to ensure that the proposed development will meet the sustainable targets, a BASIX certificate will be issued.

A BASIX certificate is issued by the Director-General of the DIPNR through the BASIX website. A certificate only applies to a single dwelling. Therefore, if a proposal contains more than one dwelling, separate certificates are required for each dwelling.

The Draft Regulation amendment specifies that a BASIX certificate must contain:

- A description of the proposal that corresponds to the description contained in the relevant applications (DA, application for complying development certificate, application for construction certificate).
- A schedule of commitments that the applicant has made regarding the design and construction of the development to satisfy the targets.
- A statement to the effect that the proposal will meet the sustainability targets if the applicant's commitments are fulfilled.

In addition to the statutory items, a certificate will include:

- Date of issue.
- A report of how the proposal scored against the targets.

A sample of a BASIX certificate is provided in annexure 12.

If a development consent is granted, the consent must include a condition that requires the development to be carried out so that it satisfies the commitments contained in the relevant BASIX certificate.

2.3 Monitoring and review

DIPNR has indicated that it will monitor and review the operation of the scheme through a knowledge group established by the Director-General and chaired by an independent person. Proposed terms of reference and operational procedures for the group are set out in *Draft Practice Note 2: About the BASIX tool (annexure 2)*.

DIPNR envisages that material, waste and recycling, social and transport indices and targets for those indices may be added to BASIX in the future.

3. Enabling legislation

Two interrelated pieces of legislation are proposed to underpin BASIX:

- An amendment to the *Environmental Planning and Assessment Regulation 2000* titled *Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004*.
- A new State environmental planning policy titled *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

Draft versions of these documents are provided as **annexures 13** and **14** to this report.

The Draft Regulation amendment includes:

- Definitions for “BASIX affected building”, “BASIX certificate”, “initial BASIX area”, “relevant BASIX certificate”, and “sustainability”.
- A description of development and application types that trigger submission of a BASIX certificate.
- Implementation dates.
- The required content of a BASIX certificate.
- Savings and transitional provisions.

Draft Practice Note 3: The Regulatory Scheme for BASIX provides information on the Regulation amendment (see **annexure 3**).

The new SEPP includes:

- Provisions that have the effect of overriding competing provisions in an environmental planning instrument or a development control plan that aim to:
 - reduce greenhouse gas emissions
 - reduce potable water consumption
 - increase the thermal performance of buildings.
- Definitions for “BASIX affected building”, “BASIX commitment” and “competing provision”.
- A provision to remove the application of *State Environmental Planning Policy No.1 Development Standards* in connection with a BASIX commitment for a building.

Draft Practice Note 4: Guideline to the BASIX SEPP (annexure 4) outlines the provisions of the draft SEPP and, in particular, identifies types of existing planning provisions for potable water consumption, greenhouse gas emissions and thermal performance that will be overridden by a BASIX assessment.

Those sustainable development provisions contained in environmental planning instruments and development control plans that are not overridden by BASIX will continue to operate in relation to proposals assessed by BASIX and for other proposals assessed outside the BASIX process. These currently include aspects of a building design such as landscaping, stormwater management, materials, waste and recycling, parking, access, adaptability, affordability, visual amenity, orientation, and solar access. The latter two aspects are not overridden because the energy and thermal comfort indices of BASIX do not deal with the preferred orientation of a dwelling on a site, or the level of solar access the dwelling will experience.

4. Implications for Woollahra

4.1 Review of sustainability provisions in DCPs

Woollahra's principal development control plans that apply to residential development and commercial centres contain a range of provisions for sustainable development. It will be necessary to identifying those "competing provisions" that are contained within Woollahra planning documents and then removing them. The definition of "competing provisions" provided in the SEPP will assist with this exercise.

These DCPs and the DCP for Exempt and Complying Development will need to be amended to include appropriate reference to BASIX.

4.2 Development assessment process

The new legislation will impose additional obligations and requirements on both applicants and Council. Applicants for those development proposals affected by the legislation requirements must submit a BASIX certificate with the various types of applications associated with the development process. In addition it is expected that applicants will need to provide adequate documentation and notation on plans to clearly identify the BASIX commitments.

For Council, all relevant application forms, checklists, brochures, guides and report templates will need to be modified. New conditions of consent will need to be prepared. In addition, the following new functions will be required:

- Additional checks at the receipting and preliminary assessment stages for applications to ensure that appropriate documentation is submitted.
- Appropriate checks and statements in the relevant application reports to confirm that the development proposal provides the necessary details to satisfy the applicant's BASIX commitments.
- Where the Council is the principal certifying authority, inspections at various stages of construction and prior to occupation. These may be additional to the current inspection regime.
- Regulatory action in the form of notices and orders to enforce compliance if necessary.

It is expected that the additional work arising from BASIX will have an impact on assessment times, although it is not possible to quantify the impact at this stage.

5. Conclusion

Sustainable development is an accepted and fundamental part of the environmental planning process. The introduction of BASIX represents a new step in the promotion and regulation of sustainable development. Whilst BASIX provides a consistent set of standards for residential development across NSW, it will require additional work for applicants and consent authorities. This additional work will need to be absorbed into development assessment process and is likely to have some impacts on assessment times.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

ANNEXURE

1. Draft Practice Note 1: An overview of BASIX
2. Draft Practice Note 2: About the BASIX tool.
3. Draft Practice Note 3: The regulatory scheme for BASIX
4. Draft Practice Note 4: Guideline to the BASIX SEPP
5. Draft Practice Note 5: Development applicants and the BASIX process
6. Draft Practice Note 6: Designing homes under BASIX
7. Draft Practice Note 7: Alternative pathway assessment under BASIX
8. Draft Practice Note 8: Consent authorities and the BASIX process
9. Draft Practice Note 9: Certifying authorities and the BASIX process
10. Chart: BASIX in the development approval process
11. Draft table of BASIX commitments
12. Sample BASIX certificate
13. Draft Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004
14. Draft State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004