



New South Wales

Environmental Planning and Assessment Amendment (Fees) Regulation 2007

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

This Regulation prescribes a fee regime in respect of applications for approval under Part 3A of the *Environmental Planning and Assessment Act 1979* to carry out a project or for the concept plan for a project (**Part 3A application**) and in relation to other matters under that Part. Currently, clause 8H of the *Environmental Planning and Assessment Regulation 2000* applies, with certain modifications, the fees and charges payable under Part 15 of that Regulation to Part 3A projects (Part 15 sets out a fee regime in respect of development assessment under Part 4 of the *Environmental Planning and Assessment Act 1979*).

The Regulation makes provision for the following matters:

- (a) the fee payable for a Part 3A application (including provision for the doubling of the fee in the case of a critical infrastructure project),
- (b) the additional application fee for giving public notice of an environmental assessment,
- (c) the additional application fee for planning reform,
- (d) the fee payable for consideration of a request for modification of the Minister's approval for a project or approval of a concept plan (including an additional fee if there is public notice of a request for modification),
- (e) the fee payable for the assessment of any aspect of a project, or a concept plan for a project, by a panel of experts (with any such assessment including the giving of public notice),
- (f) the fee payable for an investigation into a proposed State significant site.

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In addition to the new fee regime, this Regulation amends the *Environmental Planning and Assessment Regulation 2000* to exclude certain costs from any estimate or determination of the proposed cost of carrying out development for the purpose of a section 94A development contribution levy.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 75Z, 94A, 137 and 157 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Fees) Regulation 2007*.

2 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Clause 8H

Omit the clause. Insert instead:

8H Fees

The fees for applications and exercise of functions under Part 3A of the Act are as set out in Part 15 of this Regulation.

[2] Clause 25J Section 94A levy—determination of proposed cost of development

Insert after clause 25J (3) (i):

- (j) the costs of enabling access by disabled persons in respect of the development,
- (k) the costs of energy and water efficiency measures associated with the development,
- (l) the cost of any development that is provided as affordable housing,
- (m) the costs of any development that is the adaptive reuse of a heritage item.

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

Insert “(except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner)” after “application” in clause 115 (1) (h).

[4] Clause 245

Renumber the clause as clause 245AA. Insert at the end of the clause:

Note. Clause 50 (1) (c) provides that a development application must be accompanied by the fee, not exceeding the fee prescribed by Part 15, determined by the consent authority.

[5] Part 15, Division 1A

Insert before Division 1 of Part 15:

Division 1A Fees under Part 3A

245A Definitions

In this Division:

Part 3A application means an application for approval under Part 3A of the Act to carry out a project or for the concept plan for a project.

project means development to which Part 3A of the Act applies.

public notice, of an environmental assessment or other matter, means the publication of a notice of the assessment or other matter in a newspaper circulating throughout the State.

245B Determination of fees payable for Part 3A application

- (1) The fee for a Part 3A application is to be determined by the Director-General and is not to exceed the total maximum fee determined in accordance with the provisions of this Division relating to any such application.
- (2) Separate fees are payable for an application for approval of the concept plan for a project and for an application for approval to carry out that project (including where a single application is made for approval of the concept plan and for approval to carry out a part or aspect of that project).
- (3) If two or more fees are applicable to a single Part 3A application (such as an application relating to the subdivision of land and the erection of a building on one or more lots created by the subdivision), the maximum fee payable is the sum of those fees.
- (4) The total maximum fee payable for a Part 3A application for approval for part only of a project, and for any subsequent Part 3A applications for approval for any remaining part of the project, is the maximum fee that would otherwise be payable if only a single application for approval for the project was made.
- (5) A maximum fee of \$750 is payable for a Part 3A application for which no other fee is provided under this Division.

245C Payment of fees for Part 3A applications

- (1) The fee payable under this Division for a Part 3A application is payable by the applicant within 14 days after the Director-General makes the environmental assessment in relation

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to the application publicly available under section 75H (3) or 75N of the Act and notifies the applicant of the amount of the fee.

Note. For critical infrastructure projects—see also clause 245H (2).

- (2) The Minister may refuse to consider a Part 3A application if the fee payable for the application remains unpaid.

245D Maximum fee for application involving erection of building, carrying out of work or demolition (other than for marinas or extractive industries)

- (1) The maximum fee for a Part 3A application in respect of a project involving the erection of a building, the carrying out of a work or the demolition of a work or a building, and having an estimated cost within the range specified in the Table to this clause is calculated in accordance with that Table.
- (2) The fees determined under this clause do not apply to development for which a fee is payable under clause 245E or 245F.

Table

Estimated cost	Maximum fee payable
Up to \$5,000	\$750
\$5,001–\$50,000	\$750, plus an additional \$23.33 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$5,000.
\$50,001–\$100,000	\$1,800, plus an additional \$70.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$50,000.
\$100,001–\$200,000	\$5,300, plus an additional \$4.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$100,000.
\$200,001–\$500,000	\$5,750, plus an additional \$5.83 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$200,000.
\$500,001–\$1,000,000	\$7,500, plus an additional \$5.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000.

Estimated cost	Maximum fee payable
\$1,000,001–\$2,000,000	\$10,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000.
\$2,000,001–\$3,000,000	\$11,000, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$2,000,000.
\$3,000,001–\$4,000,000	\$11,500, plus an additional \$0.70 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$3,000,000.
\$4,000,001–\$5,000,000	\$12,200, plus an additional \$0.80 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$4,000,000.
\$5,000,001–\$8,000,000	\$13,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$5,000,000.
\$8,000,001–\$9,000,000	\$16,000, plus an additional \$1.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$8,000,000.
\$9,000,001–\$10,000,000	\$17,500, plus an additional \$2.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$9,000,000.
\$10,000,001–\$50,000,000	\$20,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000.
\$50,000,001–\$100,000,000	\$60,000, plus an additional \$0.60 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$50,000,000.
\$100,000,001–\$200,000,000	\$90,000, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$100,000,000.

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Estimated cost	Maximum fee payable
\$200,000,001–\$300,000,000	\$140,000, plus an additional \$0.35 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$200,000,000.
\$300,000,001–\$400,000,000	\$175,000, plus an additional \$0.81 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$300,000,000.
More than \$400,000,000	\$256,000, plus an additional \$0.64 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$400,000,000.

245E Maximum fee for application involving erection of building or the carrying out of work for marina

- (1) The maximum fee payable for a Part 3A application in respect of a project involving the erection of a building or the carrying out of work for the purposes of a marina is \$5,000, plus \$500 for each vessel that can be moored, berthed or stored at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles in hardstand areas.
- (2) In the case of a project involving the extension of an existing marina, the number of vessels referred to in subclause (1) is to be calculated on the basis of the additional number of vessels that can be moored, berthed or stored as a result of the extension of the marina.
- (3) In this clause, a *vessel* does not include a dinghy or other small craft.

245F Maximum fee for application involving extractive industry

- (1) The maximum fee payable for a Part 3A application in respect of a project involving extractive industry (not being mining) is the sum of the following:
 - (a) \$5,000 plus \$0.05 for each tonne of material that is to be extracted annually,
 - (b) if the project involves the erection of a building—the maximum fee calculated in accordance with clause 245D in relation to the erection of a building.

- (2) For the purposes of subclause (1), the Director-General is to determine the weight of material that is to be extracted annually by reference to a genuine estimate of the average annual weight of material intended to be extracted.

245G Maximum fee for application involving subdivision of land

- (1) The maximum fee payable for a Part 3A application in respect of a project involving the subdivision of land is as follows:
- (a) subdivision (other than minor subdivision and strata subdivision)—\$5,000 plus \$300 for each hectare (or part of a hectare) of the land being subdivided, up to a maximum of \$30,000,
 - (b) minor subdivision—\$750,
 - (c) strata subdivision—\$750.
- (2) In this clause, *minor subdivision* means subdivision for the purpose only of any one or more of the following:
- (a) widening a public road,
 - (b) making an adjustment to a boundary between lots, being an adjustment that does not involve the creation of a greater number of lots,
 - (c) a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings,
 - (d) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
 - (e) rectifying an encroachment on a lot,
 - (f) creating a public reserve,
 - (g) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public conveniences.

245H Maximum fee for applications relating to critical infrastructure projects

- (1) The maximum fee payable for a Part 3A application in respect of a critical infrastructure project is twice the maximum fee otherwise payable under clauses 245D–245G for a project.

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- (2) If a project is declared to be a critical infrastructure project after the fee for the Part 3A application is paid or due for payment, the balance of the fee is payable within 14 days after the Director-General notifies the applicant of the amount of the balance of the fee.

245I Additional application fee for making environmental assessment publicly available

In addition to any other fees payable under this Division, the maximum fee payable for a Part 3A application includes a maximum fee of \$2,500 for giving public notice of the environmental assessment in relation to the application under section 75H (3) or 75N of the Act.

245J Additional application fee for planning reform

In addition to any other fees payable under this Division, the maximum fee payable for a Part 3A application (other than an application for approval of a concept plan) includes a maximum fee for planning reform calculated as follows (but only if the estimated cost of the project exceeds \$50,000):

$$P = \frac{0.64 \times E}{1,000} - 5$$

where:

P represents the amount payable, expressed in dollars rounded down to the nearest dollar.

E represents the estimated cost of the project, expressed in dollars rounded up to the nearest thousand dollars.

245K Fee for request for modification of a Minister's approval to carry out a project or approval of a concept plan

- (1) The fee payable for consideration of a request for modification of the Minister's approval for a project or approval of a concept plan under section 75W of the Act is to be determined by the Director-General in accordance with this clause.
- (2) The maximum fee for a request for modification that the Director-General considers will involve a minor environmental assessment is \$750.
- (3) The maximum fee in any other case is:
- (a) 50% of the fee paid for the Part 3A application in respect of the approval for the project or concept plan that is proposed to be modified, or

(b) \$2,000,
whichever is the greater.

- (4) If there is public notice of a request for modification, an additional fee of \$2,500 is payable.
- (5) The fee payable under this clause is payable by the person making the request and must be paid within 14 days after the Director-General notifies that person of the amount of the fee.
- (6) The Minister may refuse to consider any such request if the fee remains unpaid.

245L Fee for assessment of a project by a panel of experts

- (1) The fee payable for the assessment of any aspect of a project, or a concept plan for a project, by a panel of experts constituted under section 75G (1) (a) of the Act is to be determined by the Director-General in accordance with this clause. Any such assessment includes the giving of public notice in connection with a public hearing or request for public submissions.
- (2) The fee is \$50,000, plus an additional amount (being the estimated costs of constituting the panel) of not more than \$50,000.
- (3) A fee is not payable under this clause if the Director-General determines that a fee is not appropriate in the circumstances of the case.
- (4) The fee payable under this clause is payable by the relevant Part 3A applicant and must be paid within 14 days after the panel is constituted and the Director-General notifies the applicant of the amount of the fee.

245M Fee for investigation of potential State significant site

- (1) In this clause, *State significant site investigation* means an investigation initiated by the Minister under clause 8 of the *State Environmental Planning Policy (Major Projects) 2005* into a proposed State significant site.
- (2) The fee payable for a State significant site investigation requested by a person who has or proposes to acquire an interest in all or any part of the proposed site is \$20,000 plus an additional fee of \$1,000 for each hectare (or part of a hectare) of the area of the proposed site.
- (3) The additional fee is not payable if the investigation is carried out in conjunction with the assessment of an application for approval of a concept plan under Part 3A in relation to the site.

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- (4) The fee is payable by the person requesting the investigation within 14 days after the Director-General notifies the person of the fee payable.

245N Meaning of “estimated cost” for determining fee under this Division

- (1) In determining the fee in relation to a project involving the erection of a building, the Director-General must make his or her determination by reference to a genuine estimate of the capital investment value of the project.
- (2) In determining the fee in relation to a project involving the carrying out of a work, the Director-General must make his or her determination by reference to a genuine estimate of the construction costs of the work.
- (3) In determining the fee in relation to a project involving the demolition of a building or work, the Director-General must make his or her determination by reference to a genuine estimate of the costs of demolition.
- (4) In determining the fee in relation to a concept plan for a project, the Director-General may make any necessary assumptions about the detail of the future project that is the subject of the concept plan.
- (5) For the purposes of this clause, the *capital investment value* of a project includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment (but excluding land costs and GST).

BY AUTHORITY
