



New South Wales

Environmental Planning and Assessment Amendment (Estimated Development Cost) Regulation 2023

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*.

PAUL SCULLY, MP
Minister for Planning and Public Spaces

Explanatory note

The object of this regulation is to amend the *Environmental Planning and Assessment Regulation 2021* in relation to the cost of development, also known as the capital investment value, for various purposes, including for the determination of fees for development applications.

This regulation makes consequential amendments to the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

This regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.12, 4.28, 5.10, 6.10, 6.33, 7.44 and 10.13, the general regulation-making power.

Environmental Planning and Assessment Amendment (Estimated Development Cost) Regulation 2023

under the

Environmental Planning and Assessment Act 1979

1 Name of regulation

This regulation is the *Environmental Planning and Assessment Amendment (Estimated Development Cost) Regulation 2023*.

2 Commencement

This regulation commences on 4 March 2024.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2021

[1] Sections 6 and 6A

Omit section 6. Insert instead—

6 Estimated development cost

- (1) In this regulation, the *estimated development cost*, of proposed development, means the estimated cost of carrying out the development, including the following—
 - (a) the design and erection of a building and associated infrastructure,
 - (b) the carrying out of a work,
 - (c) the demolition of a building or work,
 - (d) fixed or mobile plant and equipment.
- (2) The estimated development cost does not include the following—
 - (a) amounts payable, or the cost of land dedicated or other benefit provided, under a condition imposed under the Act, Division 7.1 or 7.2 or a planning agreement,
 - (b) costs relating to a part of the development that is the subject of a separate development consent or approval,
 - (c) land costs, including costs of marketing and selling land,
 - (d) costs of the ongoing maintenance or use of the development,
 - (e) GST.

6A Determination of BASIX development cost

- (1) This section applies if a consent authority or certifier is required to determine whether development involving an alteration of a BASIX building is BASIX development.
- (2) The consent authority or certifier must use the estimated development cost, including the cost of any part of the development that is BASIX excluded development, that is specified in the development application or application for a complying development certificate, unless, in the consent authority's or certifier's opinion, the specified estimated development cost is not genuine or accurate.

[2] Sections 35(3)(a) and 171(4)(a)

Omit “a capital investment value” wherever occurring.

Insert instead “an estimated development cost”.

[3] Section 157 Payment of security

Omit “cost of the development” from section 157(1)(b).

Insert instead “development cost, including GST”.

[4] Section 251

Omit the section. Insert instead—

251 Estimated development cost—fees

- (1) This section applies if a fee specified in Schedule 4 relating to an application is based on the estimated development cost of proposed development.
- (2) A consent authority must, when determining the fee, use the estimated development cost specified in the application, unless, in the consent authority's opinion, the specified estimated development cost is not genuine or accurate.
- (3) Subsection (2) does not apply to State significant development or State significant infrastructure.
- (4) The Planning Secretary may, when determining the fee in relation to the concept component of a staged application, make any necessary assumptions about the detail of the future stages of the development or infrastructure.

[5] Section 266 Planning reform contributions from development application fees

Omit "cost" from section 266(1). Insert instead "development cost, including GST,".

[6] Section 266(3)

Omit "cost of the development". Insert instead "development cost, including GST".

[7] Section 267 Planning reform contributions from development application fees for State significant development and State significant infrastructure

Omit "cost" wherever occurring in section 267(1)(a) and (b) and (3).

Insert instead "development cost".

[8] Schedule 4 Fees

Omit "cost of development" from item 2.1.

Insert instead "development cost, including GST, of".

[9] Schedule 4, items 2.1 and 4.5

Omit "which estimated cost" wherever occurring.

Insert instead "which the estimated development cost, including GST,".

[10] Schedule 4, items 2.3, 4.4(b) and 7.2

Omit "an estimated cost" wherever occurring.

Insert instead "an estimated development cost, including GST,".

[11] Schedule 4, items 4.5 and 7.4

Omit "cost of development" wherever occurring.

Insert instead "development cost, including GST,".

[12] Schedule 4, item 5.1

Omit "cost of development". Insert instead "development cost".

[13] Schedule 4, items 5.1 and 7.3

Omit "which estimated cost" wherever occurring.

Insert instead "which the estimated development cost".

[14] Schedule 4, item 7.3

Omit “, not referred to in item 7.1 and 7.2 for development with an estimated cost of”.

Insert instead “for State significant development, not referred to in item 7.1 or 7.2, with an estimated development cost of”.

[15] Schedule 4, item 7.3A

Insert after item 7.3—

7.3A	Application for review under the Act, section 8.3 that relates to a development application for development, not referred to in item 7.1, 7.2 or 7.3, with an estimated development cost, including GST, of—	
	Up to \$5,000	0.64 fee units
	\$5,001–\$250,000—	
(a)	base fee, plus	1.00 fee unit
(b)	for each \$1,000, or part \$1,000, by which the estimated development cost, including GST, exceeds \$5,000	\$1.50
	\$250,001–\$500,000—	
(a)	base fee, plus	5.85 fee units
(b)	for each \$1,000, or part \$1,000, by which the estimated development cost, including GST, exceeds \$250,000	\$0.85
	\$500,001–\$1 million—	
(a)	base fee, plus	8.33 fee units
(b)	for each \$1,000, or part \$1,000, by which the estimated development cost, including GST, exceeds \$500,000	\$0.50
	\$1,000,001–\$10 million—	
(a)	base fee, plus	11.54 fee units
(b)	for each \$1,000, or part \$1,000, by which the estimated development cost, including GST, exceeds \$1 million	\$0.40
	More than \$10 million—	
(a)	base fee, plus	55.40 fee units
(b)	for each \$1,000, or part \$1,000, by which the estimated development cost, including GST, exceeds \$10 million	\$0.27

[16] Schedule 6 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and section numbering—

Part Provision consequent on Environmental Planning and Assessment Amendment (Estimated Development Cost) Regulation 2023

Application of amendments

- (1) The amendments to this regulation made by the *Environmental Planning and Assessment Amendment (Estimated Development Cost) Regulation 2023* do not apply to the following—

- (a) a development application submitted on the NSW planning portal but not finally determined before the commencement date,
- (b) a modification application, if the original development application was made before the commencement date,
- (c) an application for approval of State significant infrastructure made but not finally determined before the commencement date,
- (d) a request for modification of an approval of State significant infrastructure, if the original application for approval was made before the commencement date,
- (e) an application for a complying development certificate made but not finally determined before the commencement date,
- (f) an application under the Act, section 4.30 to modify complying development, if the original application for a complying development certificate was made before the commencement date,
- (g) an application for review made but not finally determined before the commencement date.

- (2) In this section—
commencement date means 4 March 2024.

[17] Schedule 7 Dictionary

Omit “construction cost of the development” from the definitions of *BASIX development*, paragraph (c) and *BASIX optional development*, paragraph (a).

Insert instead “development cost”.

[18] Schedule 7, definition of “capital investment value”

Omit the definition.

[19] Schedule 7, definitions of “estimated development cost” and “GST”

Insert in alphabetical order—

estimated development cost—see section 6.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

Schedule 2 Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

[1] Sections 37(3) and 46(1)

Omit “a proposed cost” wherever occurring.

Insert instead “an estimated development cost”.

[2] Schedule 2 Dictionary

Omit “construction cost of the development” from the definitions of *BASIX development*, paragraph (c) and *BASIX optional development*, paragraph (a).

Insert instead “development cost”.

[3] Schedule 2, definition of “estimated development cost”

Insert in alphabetical order—

estimated development cost has the same meaning as in the *Environmental Planning and Assessment Regulation 2021*.