

Fact Sheet

Essential Public Assets – variations, appeals and Independent Technical Review

December 2025

This fact sheet is for local councils and NSW state agency asset owners. It details information on the variations and review processes associated with essential public assets under the NSW Essential Public Assets Restoration Disaster Grant Program Guidelines (the guidelines).

Key definition

- An essential public asset refers to an eligible transport or public infrastructure asset which is owned and maintained, or operated and maintained, by an eligible undertaking in accordance with the Disaster Recovery Funding Arrangements (DRFA).

Variations

Extension of claims submission timeframe

Funding submission timeframes for Essential Public Asset Restoration (EPAR) works under DRFA Category B sub-categories are based on the Allowable Time Limits (ATL) in the DRFA guidelines. In some cases, Australian Government approval is required for ATL extensions to maintain DRFA eligibility. There is no guarantee that late applications compromising compliance with ATL will be considered by NSW Reconstruction Authority (RA).

Asset owners must plan ahead to meet these deadlines if they want to access assistance. If an asset owner is at risk of not missing the deadline for claim submissions, they should notify RA immediately by emailing Reconstructioncoordination@reconstruction.nsw.gov.au

- **Emergency Works (EW)**
 - All funding assistance claims for EW must be submitted to RA using the SmartyGrants system using the relevant application form.
 - Submissions are to be lodged with supporting evidence as soon as possible after the completion of works, but no later than three months from the end of financial year in which the EW works were completed.
 - If the works and expenditure occur across multiple financial years, individual claims must be submitted for each financial year within the above mentioned timeframe.
 - Where the volume of EW undertaken is extensive, claims may be progressively lodged in batches with corresponding evidence requirements.
- **Immediate Reconstruction Works (IRW)**

- All funding assistance claims for IRW must be submitted to RA using the SmartyGrants system using the relevant application form.
- Submissions are to be lodged with supporting evidence as soon as possible after the completion of works, but no later than 3 months from the end of financial year in which the IRW works were completed.
- If the works and expenditure occur across multiple financial years, individual claims must be submitted for each financial year within the abovementioned timeframe.
- Where the volume of IRW undertaken is extensive, claims may be progressively lodged in batches with corresponding evidence requirements.
- **Essential Public Asset Reconstruction Works (EPAR)**
 - All funding assistance claims for EPAR must be submitted to RA using the SmartyGrants system using the relevant application form.
 - EPAR applications can be submitted progressively in packages of works that reflect delivery and procurement packaging, with a limit of 50 damage items per EPAR.
 - Submissions for EPAR approvals are to be lodged as soon as possible and generally no later than 6 months after the end of the financial year in which the eligible disaster occurred, unless otherwise agreed with RA.
 - Where the size and scale of the restoration works is complex or extensive, the timeframe for the funding claim application may be extended by RA to 9 months after the end of the financial year in which the eligible disaster occurred. Applicants must email a formal notification request to RA to request an extension to this timeframe to Reconstructioncoordination@reconstruction.nsw.gov.au

The “no later than” deadlines stipulated above are required to ensure RA can meet the State’s audit and assurance requirements for submission of claims to the Australian Government within the required timeframes. There is very limited scope for RA to accept claims after the “no later than” deadline and still meet its audit and assurance obligations. For this reason, RA reserves the right to reject claims that are not submitted by the nominated “no later than” deadline.

Extensions of Time for Delivery of Essential Public Asset Restoration Works

Once a Funding Deed or Total Upper Limit Grant (TULG) is in place for EPAR works, the works must be completed within 2 years after the end of the financial year when the estimated reconstruction cost was set. In exceptional circumstances, RA can approve an extension of up to 2 years and 9 months.

If you need more time, you must submit an application to extend the EPAR deadline at least 6 months before your current deadline ends. Asset owners must formally submit the application for a variation of the specific EPAR works approval through the SmartyGrants portal.

An extension should only be sought where delays are due to exceptional circumstances that are unforeseeable or beyond the control of the asset owner, and the asset owner must demonstrate they have taken steps to try minimise or mitigate the delay.

Examples of exceptional circumstances include:

- delays in impacted area returning to conditions considered safe to undertake works
- discovery of a significant archaeological or environmental site that would require extensive and prolonged consultation and negotiations
- where the nature and extent of the damage requires complex investigation and design works (for example complex geotechnical works)
- delays caused by investigations (for example, coroner’s investigations)
- the eligible disaster being of exceptional size and scale

The EPAR delivery timeframe is designed to ensure the State can access the Efficiencies Framework under the DRFA, which allows any underspend to be redirected towards natural disaster mitigation projects. Efficiencies can only be retained for 3 years from the end of the Program of Works financial year. The EPAR delivery timeframe under the guidelines provides adequate time for RA to ensure efficiencies allocation and reporting requirements under the DRFA can be met.

In rare cases where the damage is of exceptional magnitude or complexity, it may not be feasible for an asset owner to deliver the EPAR works within the extended timeframe of 2 years and 9 months after the end of the financial year in which the estimated reconstruction cost is established. In such cases, RA may seek approval from the National Emergency Management Agency (NEMA) for an extension to the ATL. However, approval is not guaranteed and could result in the State losing access to any efficiencies derived from the EPAR. Any extension to the EPAR delivery timeframes beyond this limit is subject to assessment of the status of all projects across the Program of Works year and at the sole discretion of RA.

If EPAR works cannot be completed within the approved timeframe, funding may not cover works beyond the approved completion date. For further information, refer to RA's *fact sheets: Allowable Time Limit Under the Disaster Recovery Funding Arrangements 2018* and *Allowable Time Limit – DRFA Category B restoration of essential public assets*.

Re-damaged essential public assets

If an essential public asset has been damaged by an eligible disaster (Eligible Disaster 1), and then suffers damage in the same location from another eligible disaster (Eligible Disaster 2), this is called re-damage.

If re-damage occurs and a Total Upper Limit Grant (TULG) is already in place for EPAR works, the asset owner must notify RA as soon as possible and reconcile any expenditure from Eligible Disaster 1. The application process for re-damage would be:

- where expenditure has been incurred for reconstruction works on an essential public asset directly damaged by 'Eligible Disaster 1' and the same essential public asset is re-damaged by 'Eligible Disaster 2', the asset owner must notify RA of the actual value of expenditure incurred for 'Eligible Disaster 1' and create a new EPAR submission under 'Eligible Disaster 2' to establish an estimated reconstruction cost for the works to be claimed under 'Eligible Disaster 2'.
- where expenditure has not been incurred for reconstruction works on an essential public asset directly damaged by 'Eligible Disaster 1' and the same essential public asset is re-damaged by 'Eligible Disaster 2', the asset owner is only permitted to claim the estimated reconstruction cost for 'Eligible Disaster 2'.

In these circumstances, the component of the EPAR works approval for "Eligible Disaster 1" will be closed out by RA and the TULG reduced to reflect the amount of actual expenditure for that component, or nil where no expenditure has been incurred.

For 'Eligible Disaster 2', the asset owner must establish an estimated reconstruction cost for the reconstruction of the essential public asset and submit a new funding application through the Smarty Grants portal following the process outlined in the guidelines for EPAR Works.

Refer to RA [Fact Sheet: Essential Public Assets re-damaged by a subsequent event](#) for further information.

Special Circumstances

Where a TULG is issued for EPAR works at a value lower than the actual cost of a reconstruction project as a result of special circumstances, the asset owner may be entitled to an adjustment of the estimated reconstruction cost and TULG to reflect the variance.

Eligible special circumstances as defined by the DRFA are:

- geotechnical conditions that could not reasonably have been foreseen or investigated in the design period

- previously unidentified Indigenous and cultural heritage discoveries
- previously unidentified heritage discoveries
- delays caused by subsequent eligible disasters
- environmental conditions that could not have reasonably been foreseen (for example, threatened species discovery)
- safety threats that could not reasonably have been foreseen (for example, asbestos discovery) or
- critical reduction in water availability that could not reasonably have been foreseen or investigated in the design period.

The asset owner must provide evidence to demonstrate the special circumstances encountered, including why the special circumstances could not reasonably have been foreseen, and submit this evidence as a variation request to RA through the SmartyGrants portal. RA will consult the asset owner on any proposals to vary or change the scope of works due to special circumstances. RA will liaise with the Australian Government regarding any special circumstances variations and undertake appropriate reporting.

The DRFA requires an Independent Technical Review under Application Three to be undertaken for a special circumstances variation where the variance is greater than 15% of the estimated reconstruction cost of the original project, and greater than \$1 million. Where an Independent Technical Review is required for a special circumstances variation, the variation and revised estimated reconstruction cost must be submitted within 18 months from the end of the financial year in which the disaster occurred to allow for assessment by RA and conducting of the Independent Technical Review under Application Three to ensure the DRFA Allowable Time Limit for establishing the estimated reconstruction costs for special circumstances of 24 months from the end of the financial year in which the disaster occurred can be met.

Where the identification of special circumstances falls outside this Allowable Time Limit, asset owners should notify RA as soon as possible to discuss possible options, including RA making an application to NEMA for an exemption from the Allowable Time Limit to allow a special circumstances variation to be submitted and assessed.

Complementary funding by asset owners

Asset owners may combine their own funds or resources to the TULG funding provided under these Guidelines for EPAR Works to increase the capacity of an essential public asset, amend the layout, or use enhanced materials to reconstruct the asset. These changes will require prior approval from RA, and they may only proceed if the asset is proposed to be reconstructed to provide a level of service to the community that is equal to, or better than the pre-disaster level of service. The additional funding or resources provided by asset owners to enhance the essential public asset is known as complementary funding and the additional works that occur through this funding is known as complementary works.

In circumstances where approval is given to invest complementary funding in the EPAR works, the asset owner must provide information and assistance to enable RA to clearly distinguish the amount of funding provided under the guidelines, and the complementary funding provided. This information should be clearly documented and included in the claim to enable separate acquittal against DRFA and complementary funding for the project.

Applications for complementary works are to be submitted to RA through the SmartyGrants portal for assessment and determination prior to any complementary works commencing.

For further information refer to [Essential Public Assets – defining function, standards for works and alternate solutions Fact sheet.](#)

Use of alternative solutions

The process established under the DRFA allows for alternate approaches to the reconstruction of essential public assets to be considered, once an estimated reconstruction cost has been established based on the reconstruction of the asset to its pre-disaster function. Alternate approaches can include improvements to disaster resilience, while still meeting the pre-disaster function of the damaged essential public asset.

An alternate solution provides for an opportunity to build back better and may include provisions for resilience improvements or betterment. An alternate solution is required to be delivered at or below the TULG value established and is subject to a variation approval from RA. Any additional costs for the alternate solution above the TULG value must be covered by the asset owner using complementary funding.

Where an alternate solution is proposed that is more than 50% lower than the established estimated reconstruction cost and between \$5 million and \$25 million, an Independent Technical Review under Application Two of the DRFA is required.

Where an alternate solution is approved, this is to be recorded by RA and reflected in the quarterly reporting to the Australian Government.

Applications for alternate solutions are to be submitted to RA through the SmartyGrants portal for assessment and determination prior to any works commencing.

For further information refer to [Essential Public Assets – defining function, standards for works and alternate solutions Fact sheet](#).

Under and Overspends

Where the special circumstances requirements identified in the DRFA for a variation are not able to be met, there is provision under the DRFA for the State to manage under spends and overspends with respect to the TULG values established within each financial year (Program of Works year). To be able to utilise this provision, the reporting of actual expenditure must be recorded upon completion of individual EPAR Works projects within the Program of Works year and included in reporting to the Australian Government as part of the efficiencies framework.

For any additional funding to be considered for an individual approved EPAR Works (overspends), the asset owner will be required to make a formal variation application to RA based on the actual or forecast final project costs and prior to project acquittal. RA will assess the final project costs as submitted and confirm the total value of the eligible works in the asset owners claim. RA will determine if any approval of additional payments for eligible costs above the Essential Public Asset Reconstruction works TULG are to be approved.

Final approval for any payments over and above the TULG is at the sole discretion of RA and is subject to funding being available from under expenditure in other projects across the Program of Works year in which the EPAR Works estimated reconstruction costs were established (underspends). This process is separate to the provisions in the DRFA for considering variations due to special circumstances and funding for these variations is not guaranteed to be available to asset owners.

Applications for additional TULG funding are to be submitted to RA through the SmartyGrants portal for assessment and determination.

Independent Technical Review

An Independent Technical Review may be required in order to provide increased oversight and assurance in respect of EPAR Works claims made under these guidelines. An Independent Technical Review must be conducted in the following four circumstances:

- Application One

The estimated reconstruction cost for the project is \$25 million or more.

- Application Two

Where an alternative reconstruction project solution is preferred and there is a variance between the estimated reconstruction cost for the original project and the preferred reconstruction project solution that is:

- more than 50 per cent lower than the estimated reconstruction cost of the original project, and
- to a value of between \$5 million and \$25 million.

- Application Three

Where special circumstances are encountered which give rise to a variance in the estimated reconstruction cost for the project that is:

- greater than 15 per cent of the estimated reconstruction cost of the original project, and
- greater than \$1 million.

- Application Four

The Commonwealth, on receiving the estimated reconstruction cost for a project from RA for NSW within its financial year claim, elects to have it reviewed.

RA must firstly assess the EPAR Works claim from the asset owner and establish the estimated reconstruction cost for the works.

Any projects potentially requiring Independent Technical Review are to be reported by the asset owner to RA as soon as they become aware of the likely requirement for an Independent Technical Review.

Engagement of the independent Technical Reviewer will be undertaken by RA in consultation with the asset owner. The engagement of a Technical Reviewer must be reported by RA to the Australian Government within five business days of the engagement (DRFA Schedule B clause 7.1).

Any costs that RA incurs as a result of the Independent Technical Review are eligible to be claimed as part of the estimated reconstruction cost associated with an eligible EPAR Works. Costs related to conducting the Independent Technical Review must be claimed in the financial year in which the costs are incurred for the Independent Technical Review by the state, not in the year the estimated reconstruction cost for the EPAR Works is claimed, if not in the same financial year.

Appeals process

Asset owners that have concerns about the outcome of a funding claim may write to RA, setting out their concerns and requesting an appeal to the decision in accordance with the steps outlined below.

Before appealing, the asset owner is to ensure there is a clear understanding of the assessment outcome and reasons why particular item/s have been rejected, of what the issue contested is, and why the asset owner believes that the claim assessment is not correct with reference to these guidelines and the DRFA.

Where the appeal falls within an Allowable Time Limit set by the DRFA, asset owners must ensure adequate time remains within the Allowable Time Limit for the appeals process to be completed. If the appeal cannot be resolved within the Allowable Time Limit RA may, at its sole discretion, elect to reject the appeal, or make application to the Australian Government for an exemption to the Allowable Time Limit.

Asset owner's may be required to contribute to the costs associated with an appeal where an external third party is engaged to undertake a review. Details of the steps required for the appeal process are outlined below.

Step 1: Internal Review

- Within 10 business days of receiving a funding claim outcome letter from RA, the asset owner may request a re-assessment of the claim. The request is to outline the basis of the appeal, supported by reference to the relevant section in these guidelines or clause within the DRFA.
- RA will undertake a secondary assessment by an alternate assessor with appropriate expertise and experience. The review will be undertaken based on information available at the time of the initial assessment. New information will not be considered. The scope of the review will be informed by disputed items however may include claim items previously recommended for approval. During the review the assessor will engage with the asset owner to ensure the basis for dispute is understood and the review is undertaken in a transparent manner. The asset owner will be provided an indicative timeframe for the review that considers the priorities at the time.
- On completion of the review, the outcome will be communicated to the asset owner and the final determination and justification of the decision.

Step 2: External Review (if the outcomes of internal review not accepted)

- Within 10 business days of receiving the internal review outcome, should an asset owner not accept the outcome of the internal review, they can seek an external review by outlining the basis of this appeal supported by referencing to the relevant section in these guidelines, the NSW Disaster Assistance Guidelines, or clause within the DRFA.
- Upon receiving this request, RA will engage a third-party claim assessor with appropriate expertise and experience to review the information submitted by the asset owner. A cost estimate of engaging the third party will be provided ahead of the review commencing. If no material changes in the claim outcome result from the third-party review, the asset owner is required to meet the cost of the engagement. The timeframe for review is dependent on priorities at the time and the availability of a third-party claim assessor.
- RA will communicate the outcomes of the third-party review and third-party claim assessor's recommendation to the asset owner along with RA final determination.
- RA decision will be final and no further appeal can be made or considered.

Additional Information

- NSW Reconstruction Authority Administration of Essential Public Assets Restoration website <https://www.nsw.gov.au/departments-and-agencies/nsw-reconstruction-authority/disaster-recovery-funding-arrangements>
- [NSW Essential Public Assets Restoration Disaster Grant Program Guidelines \(2025\)](#)
- The Australian Government's Disaster Assist website; Disaster Recovery Funding Arrangements (2018) disasterassist.gov.au/disaster-arrangements/disaster-recovery-funding-arrangements

For additional support, email reconstructioncoordination@reconstruction.nsw.gov.au.