



July 2017

# Natural Disaster Relief and Recovery Arrangements

## Guideline 1

### Essential public asset restoration or replacement

#### An essential public asset

1. This guideline applies to the definition of an *essential public asset* as outlined in clause 1.1 Definitions and Interpretation of the Natural Disaster Relief and Recovery Arrangements (NDRRA) Determination 2017 (*determination*).
2. An *essential public asset* under the *determination* is a *transport or public infrastructure asset* which is owned and maintained, or operated and maintained, by an *eligible undertaking* (NDRRA asset).
3. The following list provides examples of *transport or public infrastructure assets* which the *department* would consider to be NDRRA assets under the *determination*:

<b>Transport</b>	Roads Road infrastructure (including footpaths, bike lanes and pedestrian bridges) Bridges Tunnels Culverts
<b>Public Infrastructure</b> (Health, Education, Justice, Welfare)	Public hospitals Public schools Public housing Prisons/correctional facilities Police, fire and emergency services' stations Levees State/territory or local government offices Stormwater infrastructure

4. For those assets which are not listed above, the *state must* write to the *department* seeking approval to treat the asset as a NDRRA asset for the purposes of restoration or replacement works under the *determination*.
5. The following list provides examples of assets which the *department* would not consider to be NDRRA assets for the purposes of restoration or replacement works under this *determination*:
  - a. sporting, recreational or community facilities (for example, playgrounds and associated facilities)
  - b. religious establishments (for example, churches, temples and mosques), and
  - c. memorials.

6. Only eligible costs to restore or replace a NDRRA asset in accordance with the terms and conditions of the *determination* are to be claimed. For building assets, this does not extend to the costs of restoring or replacing the contents and furnishings not permanently attached to the building.
7. Further information relating to the *essential public asset* pre-approval process for restoration or replacement projects estimated at \$1 million or more, is located in the *determination* at Attachment C: Essential Public Assets Approval Form.

### Damaged as a direct result of an eligible disaster

8. In order to claim eligible costs for the restoration or replacement of a NDRRA asset, the *state must* be able to demonstrate and provide supporting evidence that the damage to the NDRRA asset has been caused as a direct result of an *eligible disaster*.
9. The *state must* be able to demonstrate and provide supporting evidence of the pre-disaster standard of the NDRRA asset and the post-disaster standard of the NDRRA asset, in accordance with the minimum evidentiary requirements outlined in the *determination* (see clause 4.8).
10. Where it is evident that the NDRRA asset has been directly damaged as a direct result of an *eligible disaster*, costs for using investigative techniques (for example, geotechnical testing) used as part of the restoration or replacement project can be claimed for reimbursement under the *determination*. For example, to determine the extent of the damage to the NDRRA asset and/or to identify how the NDRRA asset is to be restored or replaced under the *determination*.
11. Where the *state* or local government has utilised investigative techniques to identify the existence of damage to an asset where damage is not evident—or the cause of damage to an asset where it is not evident that the damage has been caused as a direct result of an *eligible disaster*—the costs associated with this process are not eligible to be claimed under the *determination*.

### Pre-disaster standard

12. In order to claim eligible costs for the restoration or replacement of a NDRRA asset, the *state must* be able to demonstrate and provide supporting evidence of the pre-disaster standard of the NDRRA asset damaged as a direct result of an *eligible disaster*.
13. The ‘pre-disaster standard’ of a NDRRA asset is considered to be the condition of the asset and its level of functionality or utility or disaster resilience prior to the *eligible disaster* (that is, as established within the 12 months prior to the *eligible disaster*). In the case of a road NDRRA asset, the pre-disaster standard includes factors such as traffic and vehicle capacity, classification and/or role of the road within the road network, signage, street parking, road width and number of carriageways.
  - For example, if the NDRRA asset is a two-lane gravel road, but the *state* or local government wants to rebuild to a three-lane bitumen road, the terms and conditions of the *determination* do not prevent the *state* or local government from building the three-lane bitumen road. However, the costs that can be claimed by the *state* under the *determination* are costs which directly relate to restoring or replacing the two-lane gravel road back to the same standard it was in pre-disaster (that is, a two-lane gravel road). The additional costs to the *state* or local government to rebuild to a three-lane bitumen road are not eligible to be claimed under the *determination* and are the exclusive responsibility of the *state* or local government.
  - In the example, the *state must* be able to demonstrate and provide supporting evidence that the eligible costs being claimed under the *determination* are those which relate directly to restoring or replacing the two-lane gravel road back to the same standard it was in pre-disaster (that is, a two-lane gravel road).

- Further, the *state must* be able to provide supporting evidence of the ineligible costs (including those that are the exclusive responsibility of the *state* or local government), that relate to the scope of works and the value of those works to rebuild the two-lane gravel road to a three-lane bitumen road.
14. Where the supporting evidence provided by the *state* indicates the condition of the NDRRA asset pre-disaster would have exacerbated the extent of damage caused as a direct result of the *eligible disaster*—for example, where there has been a lack of, or insufficient, maintenance carried out on the NDRRA asset before the *eligible disaster*—the *state* must provide appropriate *state* funding when restoring or replacing the NDRRA asset under the *determination*.

### Current building and engineering standards

15. Under the *determination* ‘current engineering and building standards’ mean that in restoring or replacing a NDRRA asset which has been damaged as a direct result of an *eligible disaster*, a modest level of flexibility can be exercised by the *state* or local government to use contemporary construction methodologies and building materials—rather than obsolete or outdated construction methodologies and building materials—to restore or replace the NDRRA asset.
- For example, where the NDRRA asset is a two-lane timber bridge and the extent of the damage to the bridge means the *state* or local government is not able to repair the bridge, but is required to demolish and replace the bridge, the *state* or local government can utilise contemporary methodologies and building materials to replace the two-lane timber bridge with a two-lane concrete or steel bridge.
  - In this example, the costs which can be claimed by the *state* under the *determination* are those eligible costs which directly relate to the demolition of the two-lane timber bridge and its replacement with a two-lane concrete or steel bridge.
  - Consistent with the minimum evidentiary requirements in the *determination*, the *state must* be able to demonstrate and provide supporting evidence of the decision made by the *state* or local government, including the justification, to demolish and replace (rather than repair) the two-lane timber bridge with a two-lane concrete or steel bridge, and the eligible costs being claimed under the *determination*.

### Not to Pre-disaster standard

16. Where a NDRRA asset is not able to be restored or replaced back to its pre-disaster standard (for example, due to site constraints) the *state must* seek the agreement of the *department* to carry out a reasonable alternative restoration or replacement solution.
17. In circumstances where the *state* or local government decides to rebuild an asset to a standard which is not in accordance with the *determination*, the terms and conditions of the *determination* do not prevent a *state* or local government from doing so.
18. Where this occurs, the *state must* be able to demonstrate and provide supporting evidence of the scope of works and the value of those works to restore or replace the NDRRA asset back to the same condition it was in pre-disaster, and the scope of works and value of those works which are the exclusive responsibility of the *state* or local government to rebuild the NDRRA asset to a standard that is not in accordance with the *determination*.

## Redamaged assets

19. Where a NDRRA asset has been directly damaged by an *eligible disaster*, that NDRRA asset is considered to be redamaged if it suffers damage in the same location by a subsequent *eligible disaster* prior to the commencement or completion of restoration or replacement works in response to the first *eligible disaster*.
20. Where a NDRRA asset has been damaged by the first *eligible disaster*—and works to restore or replace the NDRRA asset have not commenced at the time the subsequent *eligible disaster* damages the NDRRA asset in the same location—then the total amount of eligible costs to restore or replace the NDRRA asset back to the condition it was in before the first *eligible disaster* are to be claimed against the subsequent *eligible disaster*. The *allowable time limit* for the subsequent *eligible disaster* will apply to these works.
21. Where a NDRRA asset has been damaged by the first *eligible disaster*—and works to restore or replace the NDRRA asset have commenced at the time the subsequent *eligible disaster* damages the NDRRA asset in the same location—the costs to restore or replace that NDRRA asset back to the same condition it was in before the first *eligible disaster* are to be apportioned across the two *eligible disasters*, as follows:
  - **Against the first *eligible disaster* and the associated *allowable time limit***—the value of eligible restoration or replacement works carried out by the *state* or local government up to the date the *state* notified the *department* of the subsequent *eligible disaster*.
  - **Against the subsequent *eligible disaster* and the associated *allowable time limit***—from the date the *state* notified the *department* of the subsequent *eligible disaster*, the value of eligible restoration or replacement works carried out by the *state* or local government to restore or replace the NDRRA asset back to the same condition it was in before the first *eligible disaster*.

For example: If a road is damaged by flooding in May 2013, the allowable time limit for restoring or replacing that road is 30 June 2015. If a section of that damaged road is redamaged by flooding in July 2013, the allowable time limit for restoring that section of the road that has been redamaged is 30 June 2016. However, if the entire road is redamaged by flooding in July 2013, the allowable time limit for restoring that road is 30 June 2016.

## Audit and acquittal requirements

22. Consistent with the minimum evidentiary requirements outlined in the *determination*, the *state* or local government *must* be able to demonstrate and provide supporting evidence that the eligible costs being claimed under the *determination* are those directly related to restoring or replacing the NDRRA asset back to the same standard it was in pre-disaster.
23. Where applicable, it is the exclusive responsibility of the *state* or local government to demonstrate and provide supporting evidence of ineligible costs including *state* or local government funding that has been contributed towards the project.
24. Where the *state* is uncertain of the eligibility or ineligibility of an asset, or component of a NDRRA asset restoration or replacement project, the *state must* seek advice from the *department* before commencing restoration or replacement works in accordance with the *determination*. This must be in the form of Attachment C: Essential Public Assets Approval Form.

25. Providing approval to the overall scope of a *state* or local government NDRRA asset restoration or replacement project does not preclude the *department* from identifying ineligible costs at any stage of the project that *must* not be claimed by the *state* or local government under the *determination*.

Aaron Verlin, Assistant Secretary  
Attorney-General's Department  
Email: [recovery@ag.gov.au](mailto:recovery@ag.gov.au)  
Date of issue: 1 July 2017