



Planning circular

PLANNING SYSTEM

Regional and State planning

Circular	PS 21-020
Issued	2 December 2021
Related	Replaces PS 10-008

Calculation of capital investment value

This circular provides advice on the calculation of 'capital investment value' (CIV) under the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and certain State Environmental Planning Policies.

Relevance of CIV calculation

The calculation of the CIV of a development is relevant to:

- considering whether the development is State significant development, State significant infrastructure or Regionally significant development under the *State Environmental Planning Policy (State and Regional Development) 2011*, which may determine the relevant consent/approval authority for the development
- determining the fees payable for a development application for State significant development or State significant infrastructure involving the erection of a building (see clause 256P of the EP&A Regulation)
- any other use of the term in a State Environmental Planning Policy or Local Environmental Plan

A development's CIV may also be relevant to the quantum of infrastructure contributions payable under Part 7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act)

The term CIV as defined in the EP&A Regulation is separate to estimating the cost of works of a Part 4 development application and **does not** apply to the calculation of an application fee pursuant to cl 246B of the EP&A Regulation (refer to Planning Circular PS 21-022).

Definition of CIV

Clause 3 of the EP&A Regulation provides:

Capital investment value of a development or 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, other than the following costs:

- (a) amounts payable, or the cost of land dedicated or any other benefit provided, under a condition imposed under Division 7.1 or 7.2 of the Act or a planning agreement under that Division,
- (b) costs relating to any part of the development or project that is the subject of a separate development consent or project approval,
- (c) land costs (including any costs of marketing and selling land),
- (d) GST (within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth).

Case law principles on calculating CIV

The NSW Land and Environment Court judgment *Calardu Penrith Pty Ltd v Penrith City Council* [2010] NSWLEC 50 Pty Ltd and its subsequent appeal in the NSW Court of Appeal *Calardu Penrith Pty Ltd v Penrith City Council & Anor* [2010] NSWCA 189 were partly concerned with the calculation of CIV. Although neither judgment considered the current definition of CIV, the cases provide relevant principles for calculating the CIV of a development, such as:

- The development the subject of a CIV calculation must be capable of accurate identification so that the CIV can be determined with reasonable certainty
- The included costs must relate to works contemplated in the application

- The CIV of a development is to be calculated at the time of lodgement of the application
- CIV may include all costs, including costs that are not of a capital nature and are not confined to capital items, such as, for example, consultant's fees
- Costs necessary to establish and operate a development may go beyond the 'four corners' of the application, for example, details that would be included in an application for a construction certificate and excluded from the development application
- Costs do not need to be incurred by the applicant/proponent

Determination of CIV

The calculation of the CIV of a development is one of fact to be determined by the relevant consent authority. Any disagreement about a development's CIV should be resolved objectively by a quantity surveyor.

The CIV of a development is to be calculated at the time of lodgement of the development application.

This enables parties to determine whether the proposed development is State significant development, State significant infrastructure or Regionally significant development under *State Environmental Planning Policy (State and Regional Development) 2011* and consequently identify the relevant consent/approval authority for the development.

Once a development is determined to be a specific type of development based on the calculation of the CIV (i.e. State or Regionally significant), it remains as that class of development regardless of any subsequent variations to CIV (or other relevant factors).

Concept development applications

When calculating the CIV for a concept development application, the CIV of any subsequent development applications comprising the concept proposal must be considered in determining the CIV.

Note: an application can only be treated as a concept development application at the request of the applicant.

Calculating CIV

The following information is provided to assist users in establishing the types of costs that should and should not be included when calculating CIV. The following information is not exhaustive and should be considered as a general guide only.

Costs that should be included

Design and construction

The calculation of CIV should include the amount required to design and construct all buildings and other

facilities that are part of/included in the application, including any temporary buildings that will be used during the construction phase.

Costs for details that may not be included in a development application but are likely to be included in an application for a construction certificate should be included. For example, details relating to plumbing, water supply points, mechanical requirements such as for air conditioning, electrical wiring and the provision of wet areas and amenities.

Structures and infrastructure

CIV should include all costs incurred from the construction of associated structures and infrastructure that are the subject of the relevant application. These costs include any supplementary or site preparatory works such as remediation, demolition, excavation and filling, that are required for the construction of buildings, provided these works are needed to make the site suitable for construction and for the operation of the development.

Site services

CIV should include the costs of providing electrical services, water, gas, sewerage and stormwater drainage, including any temporary diversions and/or arrangements during construction.

The costs of fire protection and communications services that are reasonably required to construct and operate the development should also be included. Site works such as landscaping, car parking, roads and footpaths should also be included.

Plant and equipment

CIV should include standard building plant, such as lifts and air-conditioning, and all specialist and specific equipment related to the operation of the development.

CIV should include costs for the replacement of plant and equipment if the replacement of such equipment is a cost necessary to operate the development over the course of an extended consent period. For example, mobile mining equipment such as trucks and loaders for mining development.

Fit-out costs

Fit-out costs of a building may be included in the calculation of CIV where the costs are identified in the application. In such cases, the application would need to include specific tenancy use, and would be defined by specific reference to the description in the application. Where such tenancy is not referred to or will be subject to further applications, the fit-out costs should not be included.

Labour fees

All labour and personnel costs, including the payment of long service levies and other associated construction and labour costs should be included in the calculation of the CIV.

Other fees

Depending on the particular circumstances, costs that are not of a capital nature such as consultant fees

should also be included in the calculation of CIV. Whether costs that are not of a capital nature should be included in the calculation of CIV will turn on the question of whether such costs are necessary to establish and operate the development.

Costs that should be excluded

Development contributions

It is not appropriate to include development contribution charges when calculating CIV. These charges are considered an external cost that do not contribute to the CIV of the development.

Costs subject to a separate consent or approval

The CIV of the development must only include those works that are subject to the current application, not prior applications.

Finance costs

Costs such as finance application fees, mortgage stamp duty, fees paid to register strata titles or to amalgamate land prior to development, and interest payable on the loans associated with the development should be excluded from the calculation of CIV.

Land costs

Land costs including any costs for marketing and selling land that is subject to the development should be excluded in the calculation of CIV.

Further information

For further information please contact Service NSW on 13 77 88.

Department of Planning, Industry and Environment circulars are available at:
planning.nsw.gov.au/circulars

Authorised by:

Marcus Ray

Group Deputy Secretary Planning and Assessment

Department of Planning, Industry and Environment

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

© State of New South Wales through the Department of Planning, Industry and Environment planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.