



## Merit appeal rights

### Major projects assessment system: fact sheet 6

#### OVERVIEW

A proponent or in some cases an objector can appeal to the Land and Environment Court against the merits of a decision by the Minister for Planning in relation to a major project approval or disapproval.

Objectors to NSW Government approvals have far greater rights compared to objectors challenging local council consents. In the first eighteen months of the operation of the major projects assessment system, objector appeals were available for about 30 per cent of projects considered by the Minister, compared to less than 0.1 per cent of proposals considered by NSW local councils. This is due to the nature of the development that is subject to the major project assessment process.

#### OBJECTOR APPEAL RIGHTS

Individuals or organisations that have made a written submission regarding a project, and are dissatisfied with the Minister's determination, have appeal rights in certain circumstances. These rights are outlined in section 75L of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Historically, objector merit appeals have been available against any consent granted for development that is classified as "designated development" under Schedule 3 of the Environmental Planning and Assessment Regulation 2000. Such an appeal could be made by any person who made a submission in response to a development application for that designated development.

This remains the same under the major projects assessment system. Development nominated as "designated development" are those with potentially significant environmental and amenity impacts, such as mines, petroleum works, waste management facilities, marinas, chemical industries and electricity generating stations.

However, objector merit appeals are not available when:

- the project is a critical infrastructure project, to ensure a project declared essential to the State is not subject to unnecessary delays.
- a concept plan for the project has been approved. Concept plans are a new element under the major projects assessment system. The concept plan assessment process usually allows objectors to have an increased opportunity to comment on the one project — at the time the concept plan and again when the future detailed project assessments are exhibited.
- the project has been the subject of a report by a panel of experts or of an inquiry under Section 119 of the EP&A Act. Having an inquiry instead of an objector appeal is a long-standing provision in NSW planning law. An assessment by a panel or an inquiry means the project, or an aspect of the project, has been subject to independent review.

## PROPONENT APPEAL RIGHTS

Proponents have appeal rights, when they are dissatisfied with the Minister's determination of a project application. These are outlined in section 75K of the EP&A Act.

Proponent appeals are not available when:

- the project is a critical infrastructure project
- the proponent is a public authority
- the project has been the subject of a report by a panel of experts or of an inquiry.

Furthermore, proponent appeals are only available when the provisions of Part 4 of the EP&A Act would apply to the project, if the major projects assessment system was not in force.

Limited proponent appeal rights are available for proponents who have lodged concept plans.

## FURTHER INFORMATION

- Department of Planning website:  
[www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)