

Appeal Rights

Introduction

When the Minister for Planning (or their delegate) determines a development application, in some cases an applicant or third party (objector or any person) can appeal to the Land and Environment Court (the Court) against the merits or lawfulness of a decision.

Merit appeal provisions are set out in the [Environmental Planning and Assessment Act 1979](#) (EP&A Act) in Part 4, [Division 8 Appeals and related matters](#). Court appeals challenging the lawfulness of a decision are under s123 of the EP&A Act.

This factsheet explains the appeal provisions available under the EP&A Act to proponents and objectors for applications determined by the Minister (or delegate).

Different requirements may apply in respect of local and regional development. In those cases you should contact [your local council](#) for more information.

What are appeal rights?

Appeal rights are the means by which applicants, objectors or any person can appeal a decision made by a consent authority in relation to a development application. There are two forms of appeal, merit appeals and judicial reviews.

Judicial reviews

Judicial review proceedings are heard by a judge of the Land and Environment Court and are a review of the legality of the decision under challenge, and not a review of the merits of a development. The decision under challenge relates to determination to approve or refuse development consent, or other actions taken under the EP&A Act.

Merit appeals

Merit appeals are brought in the Land and Environment Court and generally heard by Commissioner(s) and sometimes a judge of the Court. The Court's function in a merit appeal is to remake the determination of the development application on its merits.

What applications do they apply to?

Applicant appeals

Applicants can request a judicial review for all applications, but can only make a merit appeal against these applications:

- State significant development (SSD);
- Part 4 development (which is not SSD but where the Minister is the consent authority);
- Transitional Part 3A projects; and
- Modifications (s. 96 and s. 75W).

Applicants can also appeal against a failure of the consent authority to make a decision within the timeframes specified in the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) (known as 'deemed refusal').

The types of development, the available appeal rights and the time limits (from the date the decision is notified) in which an appeal or request for review can be made are shown in Tables 1 and 2 below.

Table 1 Applicant Appeals: SSD, Part 4 Development, SSI, CSSI, Modifications

| Appeal Type | SSD / Part 4 Development | | SSI / CSSI | | Modifications (s. 96 or s. 75W) | |
|------------------------|--------------------------|-----------------------|--------------|-----------------------|---------------------------------|-----------------------|
| | Availability | Time Limit for Appeal | Availability | Time Limit for Appeal | Availability | Time Limit for Appeal |
| Merit Appeal | ✓ | 6 months | ✘ | N/A | ✓ (except if SSI or CSSI) | 6 months |
| Judicial Review | ✓ | 3 months | ✓ | 3 months | ✓ | 3 months |

Table 2 Applicant Appeals: Transitional Part 3A

| Appeal Type | If Concept Plan Approved | | If Major Project Approval | | If Critical Infrastructure Project | |
|------------------------|--------------------------|-----------------------|---------------------------|-----------------------|-------------------------------------|------------|
| | Availability | Time Limit for Appeal | Availability | Time Limit for Appeal | Availability | Time Limit |
| Merit Appeal | ✓ | 3 months | ✓ | 3 months | ✗ | N/A |
| Judicial Review | ✓ | 3 months | ✓ | 3 months | ✓ (only if Min. approves review) | 3 months |

Note: Merit appeals are not available to applicants in the case of:

- SSD or Part 4 applications determined by the consent authority following a public hearing held by the Planning Assessment Commission (the Commission) as part of the Commission's review process;
- Part 3A projects where the applicant is a public authority or the Commission has reviewed the project; and
- modifications to SSI and CSSI applications.

Third party appeals

Objectors¹ or any person can make a merit appeal or request a judicial review against these applications:

- SSD²;
- Part 4 development (which is not SSD but where the Minister is the consent authority); and
- Transitional Part 3A projects³.

The types of development, the available appeal rights and the time limits (from the date the decision is notified) in which an appeal or request for review can be made are shown in Tables 3 – 5 below.

¹ Defined as individuals or organisations lodging a submission objecting to the development during the exhibition period

² Where the development would otherwise have been designated development if [Schedule 3 of the EP&A Regulation](#) applied

³ Where the development would otherwise have been designated development if [Schedule 3 of the EP&A Regulation](#) applied

Table 3 Third Party Appeals: SSD, Part 4 Development, SSI and CSSI

| Appeal Type | SSD / Part 4 Development | | SSI | | CSSI | |
|------------------------|--------------------------|-----------------------|-------------------|-----------------------|-------------------------------------|-----------------------|
| | Availability | Time Limit for Appeal | Availability | Time Limit for Appeal | Availability | Time Limit for Appeal |
| Merit Appeal | ✓ (objectors only) | 28 days | ✗ | N/A | ✗ | N/A |
| Judicial Review | ✓ (any person) | 3 months* | ✓ (any person) | 3 months* | ✓ (only if Min. approves review) | 3 months |

Table 4 Third Party Appeals: Transitional Part 3A

| Appeal Type | If Concept Plan Approved | | If Major Project Approval | | If Critical Infrastructure Project | |
|------------------------|--------------------------|-----------------------|---------------------------|-----------------------|-------------------------------------|-----------------------|
| | Availability | Time Limit for Appeal | Availability | Time Limit for Appeal | Availability | Time Limit for Appeal |
| Merit Appeal | ✗ | N/A | ✓ | 28 days | ✗ | N/A |
| Judicial Review | ✓ (any person) | 3 months* | ✓ (any person) | 3 months* | ✓ (only if Min. approves review) | 3 months |

Table 5 Third Party Appeals: Modifications

| Appeal Type | Modifications (s. 96 or s. 75W) | |
|------------------------|---------------------------------|-----------------------|
| | Availability | Time Limit for Appeal |
| Merit Appeal | ✗ | N/A |
| Judicial Review | ✓ | 3 months* |

*From notification being made i.e. advertisement in the newspaper.

Note: Merit appeals are not available to objectors in the case of:

- SSD or Part 4 applications determined by the consent authority following a public hearing held by the Commission as part of its review process;
- Part 3A projects where the applicant is a public authority or the Commission has reviewed the project; and
- modifications (s. 96 or s. 75W).

Notification of determination

Once a decision has been made the Department will notify relevant parties (including any person who made a submission) that the application has been determined. This must happen within fourteen (14) days of the date of determination⁴.

The notification will advise whether the applicant or objector has a right of appeal against the determination⁵.

The determination will also be notified by:

- advertising in the same newspaper(s) that carried the notice of exhibition;
- uploading the assessment report and decision on the Department's website; and
- sending letters to the applicant, objectors⁶ (if an objection to the development was lodged) and relevant approval bodies⁷.

Where the application is a proposal for SSI, notification in writing is not required.

⁴ [cl. 102\(1\) EP&A Regulation](#)

⁵ As well as any other relevant matters set out in [cl. 100 of the EP&A Regulation](#). Objectors must additionally be notified of their rights to appeal under [s. 98 of the EP&A Act](#)

⁶ Defined as individuals or organisations lodging a submission objecting to the development during the exhibition period

⁷ In the case of an application to carry out integrated development that involves the issue of a separate licence / approval etc. before the development can be undertaken