

Your legal problem is about ...

Trees and hedges

Residential development

Other development

Mining

Biodiversity

Heritage

Water

Land valuation

Compensation for compulsory acquisition of land

**Reviewing a government decision**

Failing to obey the law or orders

Environmental crime

Aboriginal land claims

## Reviewing a government decision

People may have statutory rights to apply to the Land and Environment Court to review certain local and State government decisions under planning or environmental laws or mining laws. There are two main types of review: merits review and judicial review.



### Merits review

Merits review involves the Court re-exercising the administrative power previously exercised by the original local or State government decision-maker. The Court has the same functions and discretions as the original decision-maker. The appeal is by way of re-hearing and fresh evidence or evidence in addition to, or substitution for, the evidence given on the making of the original decision may be given on the appeal. The Court determines on the merits of the case what is the correct or preferable decision. The Court's decision is deemed to be the final decision of the original decision-maker and is to be given effect accordingly.

Appeals against local and State government decisions in [Class 1](#), [Class 2](#) and [Class 3](#) of the Court's jurisdiction usually involve merits review.

An example of merits review is a [development appeal](#) by a person against a determination of a local council to refuse consent to a development application. The Court on the appeal hears and determines afresh, on the facts and law applying at the time of the Court's determination, whether to grant consent or refuse consent to the development application. The Court does not review the legality of the council's decision to grant consent.

### Judicial review

Judicial review involves the Court reviewing administrative decisions and actions of local and State government under planning or environmental laws or mining laws. The Court does not review the merits of the decision or action. Instead, the Court reviews the legality of the decision or action, such as whether the decision-maker had power under the relevant statute to make the decision or take the action, followed the proper process and exercised the power in accordance with the law. If the Court upholds the judicial review claim, the Court may make a declaration, set aside the original decision, or make orders.

Judicial review proceedings are in [Class 4](#) of the Court's jurisdiction for review of decisions and actions under specified planning or environmental laws and [Class 8](#) of the Court's jurisdiction for review of decisions and actions under specified mining laws.

An example of judicial review is a proceeding to declare invalid a determination of a local council to grant development consent to a development application. The Court reviews the legality of the decision, such as whether the council had power to grant consent, whether the council followed the correct legal process in determining the application and whether the council took into account relevant considerations and ignored irrelevant considerations. The Court does not determine afresh whether it would have granted consent to the development on the merits.

### More information

See [types of cases](#) for more information about particular types of cases in [Class 1, 2 and 3](#) involving merits review, and [Classes 4 and 8](#) involving judicial review.

## Reviewing a government decision

### Fast track ...

Need to know how to apply for a review of a government decision? See [types of cases](#) for more information about particular types of cases involving merits review, and cases involving judicial review.

### **Need legal advice or information?**

In NSW, there are a number of places where you can get specialised legal advice on the sorts of legal problems heard by the Land and Environment Court. Find out [where to get legal advice and information](#).