



RURAL LANDHOLDER'S GUIDE TO ENVIRONMENTAL LAW IN NSW

4TH EDITION

NSW

EDO

**DEFENDING THE ENVIRONMENT
ADVANCING THE LAW**

About EDO NSW

EDO NSW is an independent community legal centre that specialises in public interest environmental and planning law. Our main office is in Sydney and we have a smaller office in Lismore (Northern Rivers). Our work involves four main functions:

- community legal education (outreach);
- policy and law reform;
- legal advice and case work; and
- scientific and technical expert assistance.

We run a free advice line where people can seek initial legal advice and information on an environmental issue that affects them.

Sydney: (02) 9262 6989 or 1800 626 239; Northern Rivers: 1300 369 791.

If you would like EDO NSW to visit your area to conduct a free workshop on the topics covered in this booklet, please contact us on 02 9262 6989 or email education@edonsw.org.au.

This booklet is also available in hard copy, with a currency date of November 2010. To order a copy (or multiple copies), call us or email edo.nsw@edonsw.org.au.

For more information about EDO NSW, please visit: <http://www.edonsw.org.au>.

Disclaimer

This booklet seeks to provide general information only and is not a substitute for legal advice in individual cases. If you wish to receive legal advice, please call our advice line (contact details above).

Currency

The information contained in this booklet is current as at 30 November 2012.

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1.0 Introduction

The purpose of this booklet is to help you understand your legal rights and obligations as a landholder and to manage your land in accordance with environmental and natural resource management law.

Every effort has been made to provide information that is accurate in a straightforward way. If you have questions about how this information applies to your circumstances, you should speak to a lawyer at EDO NSW.



2.0 Vegetation Management

Native vegetation is important to the protection of the land surface and the maintenance of ecosystem processes. It also has a role to play in the maintenance of local climate and the conservation of biodiversity. Native vegetation also has commercial and aesthetic values,¹ particularly with regards to the tourism and timber industries.

Since European settlement, the native vegetation in NSW has been extensively cleared and degraded.² The law therefore seeks to regulate the clearing of native vegetation and it is important that landholders are aware of the constraints that apply. This Chapter also includes information on plantations and private native forestry in NSW.

The NSW Government is currently undertaking a review of the native vegetation rules.³ This publication will be updated when any changes from the review are implemented.

Do I need permission to clear native vegetation on my own land?

You will need permission to clear native vegetation in most circumstances.

'Native vegetation' includes: trees (including any sapling, shrub or scrub); understorey plants; groundcover (including any type of herbaceous vegetation); and wetland plants that are indigenous to New South Wales.⁴

The law categorises native vegetation as:⁵

- **regrowth:** any native vegetation that has regrown since 1 January 1983 in the Western Division, and 1 January 1990 in the rest of the State;
- **protected regrowth:** regrowth identified as protected in a property vegetation plan, environmental planning instrument,⁶ natural resource management plan or interim protection order; or
- **remnant native vegetation:** any native vegetation other than regrowth.

Permission is required to clear protected regrowth and remnant vegetation.⁷

Mangroves, seagrasses and other marine vegetation are regulated separately.⁸

'Clearing' includes: cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.⁹ Clearing does not include activities like pruning and lopping native vegetation and slashing native groundcover so long as the activity does not kill the vegetation. Except for the commercial collection of firewood, the removal of dead timber is not clearing.

It is an offence to clear native vegetation unless the clearing is approved, permitted or exempt.¹⁰ Clearing native vegetation is only permitted in the following circumstances:

- The clearing is approved by:
 - a development consent granted by the Minister for the Environment;¹¹
 - a development consent for State significant development;¹²
 - a property vegetation plan approved by the Minister for the Environment that allows for clearing.¹³

- The clearing is permitted because the native vegetation is:
 - regrowth that is not protected;¹⁴
 - certain groundcover.¹⁵
- The clearing is exempt because it is:
 - a 'routine agriculture management activity' to the minimum extent necessary to carry out that activity;¹⁶
 - a continuation of existing cultivation, grazing or rotational farming practices;¹¹⁷
 - authorised under other legislation, such as clearing for certain types of development (such as mining or road works), emergency fire-fighting;¹⁸
 - necessary erecting a single dwelling which has development consent;¹⁹
 - authorised under a development consent granted under the now repealed *Native Vegetation Conservation Act 1997*;²⁰ or
 - sustainable grazing.²¹

It is also an offence to clear certain non-native vegetation on State Protected Land.²²

It is important that landholders proposing to clear native vegetation seek advice from their local Catchment Management Authority and/or local council before doing so.

What are routine agricultural management activities?

Routine agricultural management activities or 'RAMAs' include: sourcing timber for on-farm structures, the removal of noxious weeds, the collection of firewood for non-commercial purposes, clearing vegetation to remove imminent risks of serious injury or damage to property, building rural infrastructure with appropriate buffer distances, corridors for fire protection, power and water supply and harvesting commercially planted timber.

For more information, see the Office of Environment and Heritage (OEH) [Information Sheets](#) or contact your local [Catchment Management Authority](#).

Case Study: Prosecution for illegal clearing

Walker Corporation, through its contractor, was found guilty of illegally clearing native vegetation.²³ This case is important for a few reasons.

Firstly, the Court interpreted "vegetation" as including both dead and alive vegetation.

Secondly, the Court noted that it is the defendant's responsibility to establish the defence that the clearing was "only regrowth". The standard of evidence for this defence is on the balance of probabilities.

Thirdly, the Court found that the Walker Corporation's clearing of blackberries (a noxious weed) may be a "routine agricultural management activity", however in this case it wasn't permitted. This was because the Walker Corporation didn't establish that the clearing did not go beyond the *minimum extent necessary*, as required by native vegetation laws.

The prosecution used satellite images and aerial photography to prove the offence of illegal clearing. Walker Corporation was fined \$200,000 and ordered to pay the prosecutor's costs.²⁴

What clearing consents/approvals are available?

Landholders who want permission to clear native vegetation need to apply to their local [Catchment Management Authority](#)²⁵ to prepare a Property Vegetation Plan (PVP) or apply to the CMA for development consent.²⁶

PVPs are negotiated agreements between a landholder and their local CMA. A PVP can be developed for individual landholders or a group of neighbouring landholders;²⁷ for part of or a whole property; and can last for up to fifteen years.²⁸

PVPs contain an aerial photo of the relevant area with any regrowth, protected regrowth and remnant native vegetation identified and mapped; operational plans for clearing; management obligations; descriptions of vegetation to be cleared and retained; and any applicable offsets.²⁹ The plan will continue to have effect if the land is purchased by another person.³⁰

What is the difference between clearing under a development consent and clearing under a PVP?

A development consent is limited to authorising specific instances of clearing, while a PVP can cover the whole of your land and can include other management actions such as conservation of areas used to offset the impact of clearing. Development consents are also usually issued for a shorter period of time (usually 5 years or less).

To find out more about the PVP and development consent options, contact your local CMA.

How are PVPs and development consents assessed?

The clearing of remnant native vegetation and/or protected regrowth will only be approved by the CMA if environmental outcomes can be maintained or improved.

The impacts of clearing are figured out on a case by case basis by applying a tool called the Environmental Outcomes Assessment Methodology (EOAM). In order to improve environmental outcomes, it will usually be necessary to offset the clearing by committing to management actions that improve environmental outcomes elsewhere on the property.

You will need to contact a CMA consultant to come to your land and apply the EOAM. The EOAM assesses the proposed clearing in relation to impacts on water quality, salinity, biodiversity and soil quality. The information from the EOAM and any offsets is entered into a computer program which then assists the CMA consultant to decide whether the overall impacts of the clearing will improve or maintain environmental outcomes.

The [EOAM](#) is available from the Office of Environment and Heritage.³¹

How do I get approval for private native forestry activities?

Private Native Forestry (PNF) is the sustainable logging of native vegetation on private property.³² All PNF activities require approval. Approval can be obtained by entering a Private Native Forestry Property Vegetation Plan (PNF PVP).³³

Applications for PNF PVPs are made to the Office of Environment and Heritage. Landholders must obtain the owner or leaseholder's consent before the PVP is finalised.

A PNF PVP consists of a map of the property showing the area subject to the PVP and

marking the areas that cannot be logged (such as old growth forest, rainforest, steep areas and riparian exclusion zones). It is accompanied by a declaration that the PNF operations will be carried out in accordance with the PNF Code of Practice.

A PNF PVP lasts for up to 15 years. If the PNF activities are carried out in accordance with the PVP (which includes the relevant Code of Practice), they are deemed to maintain or improve environmental outcomes, and it is unnecessary to obtain any further licences such as a licence to harm an endangered species or damage critical habitat.³⁴

Once a PNF PVP is in force, there are some constraints on the type and extent of RAMAs that can occur in the area subject to the PNF PVP.³⁵

For more information on RAMAs, see above.

What is the PNF Code of Practice?

There are four PNF Codes of Practice covering Northern NSW (north of Sydney), Southern NSW (south of Sydney), River Red Gum forests (effectively south western NSW) and Cypress/ Ironbark forests (effectively central western NSW).

The Codes of Practice set out the manner in which PNF activities must occur, including regeneration requirements. They require the preparation of a Forest Operations Plan. The Codes impose constraints on logging habitat trees and on logging in some environmentally significant areas such as wetlands, old growth forest and Aboriginal places.

For more information on PNF PVPs, contact the Office of Environment and Heritage.

For more information about PNF Codes of Practice, see the [OEH website](#).³⁶

How are PNF PVPs and Codes of Practice enforced?

Once a PNF PVP has been signed, it forms a legally binding agreement that runs with the land.³⁷ Limited details about the PNF PVP are listed in a [Public Register](#).³⁸ Landholders are required to send an annual report to the OEH if they have carried out PNF activities in the previous year, or intend to carry them out in the forthcoming year.³⁹

The OEH can conduct audits to ensure that the PNF operations are being carried out in accordance with the Codes of Practice.⁴⁰

There are serious penalties for breaching the applicable PNF Code of Practice. For example, it is an offence to log within a watercourse and the potential penalty for doing so is up to \$1,100,000.⁴¹

If you breach the Code of Practice, the OEH can issue you with a Penalty Infringement Notice or, if the breach is serious, the OEH can prosecute the offence in court.

Case Study: Prosecution for breaching PNF Code of Practice

A North Coast forestry company was convicted by the Grafton Local Court of illegally cutting down 7 mature native trees on land near Coffs Harbour.⁴² The trees that were cut down were all located within 5 metres of the banks of a stream.

The Court was told that the trees were cleared during a PNF harvesting operation. Cutting down trees located that close to the stream was in breach of the company's PNF PVP and the PNF Code of Practice for northern NSW.

The company pleaded guilty to the offence and was fined \$5000. It was also ordered to pay \$500 in prosecutor's costs.

The Court noted that the severity of the offence was increased because the clearing was part of a commercial enterprise.

What happens if I clear native vegetation without permission?

It is unlawful to clear remnant native vegetation or protected regrowth without a development consent or an approved PVP unless the clearing fits within identified exemptions.

CMA, OEH and other authorised officers have the power to enter your land for the purpose of determining whether an offence has been committed.⁴³

It is an offence to obstruct a CMA or OEH officer in the exercise of their functions⁴⁴ or to give them false or misleading information.⁴⁵ The Executive Director of the OEH may also issue 'stop work' or remedial orders where the law has been breached.⁴⁶

The maximum penalty for clearing without an approval is \$1,100,000.⁴⁷

Criminal and civil action may be brought by the OEH for breaches of native vegetation laws. Members of the public may also bring court action to remedy or restrain a breach of the laws.⁴⁸

The OEH has been using satellite imagery to monitor areas that may have been illegally cleared and warrant further investigation. While the technology is generally used for advising and educating landholders about native vegetation laws, you should be aware that satellite images may be used as evidence if the OEH decides to prosecute for illegal clearing.

Case Study: Prosecution for illegal clearing and failure to comply with a notice

Hudson owned a 2,126 hectare property located about 60 kilometres west of Moree. Hudson was convicted of two offences under the *Native Vegetation Act 2003* (NSW).⁴⁹ The first was that he authorised the clearing of native vegetation on his property without first obtaining a development consent or entering into a PVP. The second offence was that he failed to comply with a notice to provide information without reasonable excuse.

The Court considered that the offences were committed deliberately and in circumstances where Hudson had been expressly told that native trees on his property must be retained. The Court also found that the extent of harm was large due to the substantial amount of clearing, and therefore the first offence was in the upper range of seriousness.

The Court imposed a \$400,000 penalty for the first offence and fined Hudson \$8,000 for the second offence. Hudson was also ordered to pay the prosecutor's costs in bringing the case.

Is there assistance available to help landholders conserve and protect native vegetation?

There are a range of schemes designed to encourage landholders to conserve the native vegetation on their properties. These schemes will be particularly attractive to landholders who cannot get approval to clear their land.

For more information on financial incentives, see Chapter 12.0 – Conservation on Private Land.

For information concerning the management of native vegetation, contact your local [Catchment Management Authority](#).

You may also be able to use your property as a BioBanking site or enter a carbon offsets scheme.

For more information on BioBanking, see Chapter 13.0 – Trading and Offsetting.

2.1 PLANTATIONS

How are plantations regulated?

Plantations are areas of land where the majority of canopy trees or shrubs have been planted for timber, environment protection or purposes other than food production.⁵⁰

Carrying out plantation operations without the necessary authorisation is an offence.⁵¹ For new plantations, authorisation is required under the *Plantations and Reafforestation Act 1999* (NSW) (PAF Act).⁵²

Certain Codes apply to plantations. These include the Plantations and Reafforestation Code (PAF Code),⁵³ and the Code for Exempt Farm Forestry. The PAF Code is subject to review every 5 years and the review includes an opportunity for the public to make submissions on its content.⁵⁴

What approvals do I need for a plantation?

Authorisation is not necessary for “exempt farm forestry” which is defined as a farm of less than 30 hectares where the clearing of native vegetation is exempt from the requirement for development consent under the *Native Vegetation Act 2003*, and the amount of harvested timber falls within the limit allowed by the Code for Exempt Farm Forestry.⁵⁵

Authorisation is not required for plantations that are merely ancillary to other development.⁵⁶

Authorised plantation operations do not require certain approvals under other legislation, including development consent under the *Native Vegetation Act 2003* (NSW), or approval as a controlled activity under the *Water Management Act 2000* (NSW). In addition, authorised operations are not subject to certain provisions of other legislation that protect fauna and flora (including threatened species), heritage, or soil erosion. Other government agencies are restricted in their ability to prevent plantation operations going ahead, as long as the operations are occurring in accordance with the conditions of the authorisation and the PAF Code.⁵⁷

How do I obtain an authorisation?

Applications for authorisation are made to the Minister for Primary Industries. If an applicant can provide a statement demonstrating that the plantation complies (or will comply) with the development standards set out in the PAF Code, the Minister is required to provide the requested authorisation.⁵⁸

If the applicant is unable to provide a statement demonstrating that the plantation complies with the PAF Code, a more substantial application process applies. The landholder will need to state the extent to which the proposed plantation complies with the PAF Code and include a statement of environmental effects addressing matters required by the PAF Code.

Authorisations can be granted subject to various environmental conditions and any breach of these conditions, or the PAF Code, can result in a cancellation of the authorisation.⁵⁹ The Minister can also impose additional conditions on, or cancel, an authorisation if it is necessary to protect unique or special wildlife values of the land concerned.⁶⁰ There is a duty on the owner and manager of the plantation to alert the Minister to any likely impacts of the plantation on such wildlife.⁶¹

Appeals can be made to the Land and Environment Court against decisions to refuse, impose conditions on, or cancel authorisations within 28 days of notification of the decision.⁶²

The Minister is required to keep a [public register](#) of authorisations (including applications for authorisations).⁶³

For further information about the application of the PAF Act, the PAF Code and authorisations, see the Primary Industries [website](#).

Who ensures that authorisations are complied with?

There are no general rights for the public to enforce the PAF Code or the conditions of authorised plantations. This is left to the Minister for Primary Industries, who can issue stop work orders, direct remedial action, or bring proceedings in the Land and Environment Court to restrain a breach of the PAF Act or the PAF Code.⁶⁴ However, authorised officers can also investigate compliance with the PAF Code and the PAF Act, and may issue penalty notices.⁶⁵

2.2 TREE AND VEGETATION PRESERVATION

The *Native Vegetation Act* does not apply to land zoned “residential”,⁶⁶ “village”, “township”, “industrial” or “business”. However, there are still restrictions on the clearing of trees and vegetation in these zones. These restrictions are contained in either the local environmental plan (LEP) or Tree Preservation Order (TPO).

The [Standard Local Environmental Plan](#) (Standard LEP) provides an optional clause (Clause 5.9) covering the preservation of trees or vegetation which, if adopted by a council, will replace their current Tree Preservation Orders.⁶⁷

The objective of Clause 5.9 of the Standard LEP is to preserve the amenity of the area through the preservation of trees and other vegetation.⁶⁸ The trees and vegetation to which the clause will apply will be identified in your council’s development control plan (DCP). The DCP may specify the trees and vegetation by species, type, size or location.⁶⁹

Clause 5.9 of the Standard LEP prohibits a person from ringbarking, cutting down, topping, lopping, removing or willfully destroying a tree or vegetation listed in the DCP without a

development consent or permit granted by the council.⁷⁰ One exception to this prohibition is plants declared to be noxious weeds.⁷¹

You'll need to check the LEP and DCP applying to your land to find out if you can remove trees.

What about current Tree Preservation Orders?

If your council has not yet updated its LEP to the Standard Instrument or has chosen not to include Clause 5.9, any TPO may continue in force. TPOs make it an offence to damage certain trees in a local government area or zone without a permit issued by the council. TPOs vary, so it is wise to check with your local council to obtain the terms of the TPO in your local government area. In many local government areas, the TPO does not apply to land zoned rural.

It is important that you check with your local council before removing a tree or vegetation, even if you do not intend to personally do the work. This is because laws restricting the clearing of trees and native vegetation are enforceable against the landholder, even if a third party does the work.⁷² Similarly, Clause 5.9 of the Standard LEP prohibits 'a person' (not just the landholder) from removing or harming trees and vegetation.

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1. Native Vegetation Advisory Council (2001), *The Ecological Role of the Native Vegetation of NSW*, background paper prepared for the Department of Land and Water Conservation, Available at: http://live.greeningaustralia.org.au/nativevegetation/pages/pdf/Authors%20S/9_Smith_et_al.pdf.
 2. Native Vegetation Advisory Council (2001), *The Ecological Role of the Native Vegetation of NSW*, background paper prepared for the Department of Land and Water Conservation, Available at: http://live.greeningaustralia.org.au/nativevegetation/pages/pdf/Authors%20S/9_Smith_et_al.pdf.
 3. For further information, see: <http://www.environment.nsw.gov.au/vegetation/nvmanagement.htm>
 4. *Native Vegetation Act 2003* (NSW), s. 6(1). 'Indigenous' means a species of vegetation that existed in the State before European settlement: s. 6(2).
 5. *Native Vegetation Act 2003* (NSW), ss. 9-10.
 6. Environmental Planning Instruments include local environmental plans (LEPs) and State Environmental Planning Policies (SEPPs).
 7. *Native Vegetation Act 2003* (NSW), s.12.
 8. Under the *Fisheries Management Act 1994* (NSW) which is administered by NSW Trade and Investment.
 9. *Native Vegetation Act 2003* (NSW), s. 7.
 10. *Native Vegetation Act 2003* (NSW), s. 12(2).
 11. *Native Vegetation Act 2003* (NSW), ss. 13-14. The Minister for the Environment has delegated this role to the Catchment Management Authority.
 12. *Environmental Planning and Assessment Act 1979* (NSW), s. 89J.
 13. *Native Vegetation Act 2003* (NSW), Pt. 4. In practice, Property Vegetation Plans are approved by the Catchment Management Authority.
 14. *Native Vegetation Act 2003* (NSW), s.19.
 15. *Native Vegetation Act 2003* (NSW), s. 20. Groundcover that is less than 50% indigenous and 10% or more is covered with vegetation, dead or alive.

16. *Native Vegetation Act 2003* (NSW), s. 22.
17. *Native Vegetation Act 2003* (NSW), s. 23. The continuation of existing cultivation, grazing or rotational farming practices is permitted if it does not involve the clearing of: remnant native vegetation or red river gum, belah or white cypress pine trees greater than 3 metres high in the Western Division.
18. *Native Vegetation Act 2003* (NSW), s. 25.
19. *Native Vegetation Regulation 2005* (NSW), cl. 6.
20. The provisions of the (NSW) *Native Vegetation Conservation Act 1997* (repealed) will continue to apply to State protected land, including land defined as protected land under the *Soil Conservation Act 1938* (NSW), until a SEPP otherwise provides: See *Native Vegetation Act 2003* (NSW), Schedule 3, Part 2, Clause 4.
21. *Native Vegetation Act 2003* (NSW), s. 24. Sustainable grazing is grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation.
22. *Director-General, Department of Environment and Climate Change v Walker Corporation Pty Limited* (No 2) [2010] NSWLEC 73.
23. *Director-General, Department of Environment and Climate Change v Walker Corporation Pty Limited* (No 4) [2011] NSWLEC 119.
24. The powers of the Minister for Environment can be delegated to your local Catchment Management Authority: *Native Vegetation Act 2003* (NSW), s. 48. This has happened in NSW, which makes the CMA responsible for issuing consents and negotiating PVPs.
25. *Native Vegetation Act 2003* (NSW), s. 12. The Minister for Environment is the consent authority but this power has been delegated to the local CMA so in practice, it is the CMA that grants consent. See (NSW) *Native Vegetation Act 2003*, s. 48.
26. *Native Vegetation Act 2003* (NSW), s. 26.
27. *Native Vegetation Act 2003* (NSW), s. 30.
28. *Native Vegetation Act 2003* (NSW), s. 28.
29. *Native Vegetation Act 2003* (NSW), ss. 30-31.
30. See: <http://www.environment.nsw.gov.au/vegetation/eoam/index.htm>
31. *Native Vegetation Regulation 2005* (NSW), cl. 3.
32. *Native Vegetation Act 2003* (NSW), s.12 and see also *Native Vegetation Regulation 2005* (NSW), cl. 6A, 12A.
33. Under the *Threatened Species Conservation Act 1995* (NSW). See: *Native Vegetation Regulation 2005* (NSW), cl. 29B.
34. *Native Vegetation Regulation 2005* (NSW), cl. 23A, 23B.
35. See: <http://www.environment.nsw.gov.au/pnf/index.htm>
36. *Native Vegetation Act 2003* (NSW), s. 31.
37. *Native Vegetation Regulation 2005* (NSW), cl. 12. The public register is available here: <http://www.environment.nsw.gov.au/pnf/approvedpnfpvps.htm>
38. Department of Environment, Climate Change and Water, 'Private Native Forestry Code of Practice Fact Sheet No. 1'. Available at: <http://www.environment.nsw.gov.au/resources/pnf/09706pnfoverview.pdf>.
39. *Native Vegetation Act 2003* (NSW), s. 35.
40. *Native Vegetation Act 2003* (NSW), s. 12; (NSW) *Environmental Planning and Assessment Act 1979*, s. 126.

41. *Director-General of the Department of Environment, Climate Change and Water v Clarence Resources Pty Ltd*
42. *Native Vegetation Act 2003* (NSW), s. 35.
43. *Native Vegetation Act 2003* (NSW), s. 35(5).
44. *Native Vegetation Act 2003* (NSW), s. 36(4).
45. *Native Vegetation Act 2003* (NSW), ss. 37, 38.
46. *Native Vegetation Act 2003* (NSW), s. 12(2); *Environmental Planning and Assessment Act 1979* (NSW), s. 126.
47. *Native Vegetation Act 2003* (NSW), s. 41.
48. *Director-General of the Department of Environment and Climate Change v Hudson* [2009] NSWLEC 4
49. *Plantations and Reafforestation Act 1999* (NSW), s. 5.
50. *Plantations and Reafforestation Act 1999* (NSW), s. 9.
51. The Act does not apply to various areas including flora reserves, various types of land falling under the *National Parks and Wildlife Act 1974* (NSW), land containing critical habitat for endangered species and certain urban areas. Nor does the *Plantations and Reafforestation Act 1999* (NSW) apply to those areas the subject of the State Environmental Planning Policies relating to Coastal Wetlands and Littoral Rainforest: *Plantations and Reafforestation Act 1999* (NSW), s. 7 and Schedule 1.
52. The PAF Code can be found at: http://www.austlii.edu.au/au/legis/nsw/consol_reg/parr2001438/sch98.html.
53. *Plantations and Reafforestation Act 1999* (NSW), s. 30. See Industry and Investment NSW website at: <http://www.dpi.nsw.gov.au/agriculture/resources/private-forestry>.
54. *Plantations and Reafforestation Act 1999* (NSW), s. 6. Any clearing of State protected land which still falls under the former *Native Vegetation Conservation Act 1997* (NSW) because a State environmental planning policy has not otherwise provided must also be exempt from requiring development consent under Part 2 of the 1997 Act.
55. *Plantations and Reafforestation Act 1999* (NSW), s. 9(1).
56. *Plantations and Reafforestation Act 1999* (NSW), Part 6.
57. *Plantations and Reafforestation Act 1999* (NSW), ss. 11-13.
58. *Plantations and Reafforestation Act 1999* (NSW), s. 22.
59. *Plantations and Reafforestation Act 1999* (NSW), ss. 22, 35. Compensation may be payable: See s. 36.
60. *Plantations and Reafforestation Act 1999* (NSW), s. 33.
61. *Plantations and Reafforestation Act 1999* (NSW), s. 24.
62. The public register can be viewed here: <http://www.dpi.nsw.gov.au/agriculture/resources/private-forestry/plantation-forestry>
63. *Plantations and Reafforestation Act 1999* (NSW), Part 7.
64. *Plantations and Reafforestation Act 1999* (NSW), s. 62.
65. This does not include land zoned "rural residential".
66. Standard Instrument – Principal Local Environmental Plan, cl. 5.9.
67. *Standard Instrument- Principal Local Environment Plan*, cl. 5.9(1).
68. *Standard Instrument- Principal Local Environment Plan*, cl. 5.9(2).
69. *Standard Instrument- Principal Local Environment Plan*, cl. 5.9(3).

70. Under the *Noxious Weeds Act 1993* (NSW). See: *Standard Instrument- Principal Local Environment Plan*, cl. 5.9(8)(e).
71. *Native Vegetation Act 2003* (NSW), s. 12(2). See also: *Parramatta City Council v Cheng* [2010] NSWLEC 94.



3.0 Protected Plants and Animals

What plants and animals are protected?

In NSW, the Office of Environment and Heritage (OEH) is responsible for the protection of native animals and plants. This responsibility is carried out by the National Parks and Wildlife Service which is a division of the OEH.

It is an offence to pick or have in your possession a protected native plant without a licence issued by the OEH, unless the native plant is grown on private property and has been picked by or with the consent of the owner or if that plant is cultivated as a hobby.

For information about which plants are protected, contact OEH or visit their [website](#).¹

It is an offence to harm native animals. This includes harm by using a substance, an animal, a gun, explosive, net, or trap. It is an offence to buy, sell or possess native animals without a licence.

The OEH issues licences which allow people to harm native animals.

A person has not committed an offence by harming or killing native animals if:

- they had a licence;²
- the work causing the harm was done in accordance with an approval to carry out a development;³
- they had a conservation agreement or a joint management agreement;⁴ or
- the animal was not capable of fending for itself in its natural habitat.⁵

How are threatened species protected?

Threatened species are protected under both NSW and Federal laws.

NSW protection

A species, population or ecological community must be listed on the [threatened species list](#) in order to be covered by legal protections.⁶ The lists divide threatened species into categories – vulnerable, endangered and critically endangered.⁷

It is a criminal offence to:

- harm threatened or endangered species from an endangered population or an endangered ecological community;⁸
- pick any plant from an endangered population or an endangered ecological community;⁹ or
- trade, buy or sell any threatened or endangered species.¹⁰

There are similar offences in relation to fish and marine vegetation.¹¹ There are serious penalties for breaching threatened species laws.¹²

For more information on NSW listed threatened species, contact OEH or visit their [website](#).¹³

Federal protection

Federally listed threatened species and ecological communities are protected under Federal law.¹⁴

Any action that is likely to have a significant impact on nationally listed threatened species or ecological communities must be referred to the Federal Minister for the Environment and undergo an environmental assessment and approval process.¹⁵ It is an offence to undertake an action that will have a significant impact on a nationally listed threatened species or ecological community without first obtaining an approval from the Federal Minister for the Environment.

It is also an offence to do the following in relation to nationally listed threatened species:

- to recklessly kill or injure a threatened species or community, migratory species or listed marine species;¹⁶
- to recklessly take any threatened species or community, migratory species or listed marine species;¹⁷ or
- to trade in any threatened species or community, migratory species or listed marine species.¹⁸

*For information on nationally listed threatened species, contact the Commonwealth Department of Sustainability, Environment, Water, Population, and Communities or visit their [website](#).*¹⁹

How do I know if I am going to affect threatened species?

It is sometimes hard for a non-expert to decide if a development is going to affect a threatened species. For a start, you may not know whether or not there are any threatened species on your property. However, if you do something which harms a threatened species without obtaining the appropriate licence, permit or approval you could be guilty of a criminal offence.

If you are planning to do any significant work on your property, you should first contact your local council to determine if there are any State Environmental Planning Policies, local environmental plans or tree preservation orders applying to your land with respect to native trees and threatened species.

If the activity does not require development consent, it may be advisable to seek the advice of an environmental consultant on the existence of threatened species in your area. There are many environmental consultants operating in NSW, some of whom specialise in threatened species. You can find them online or in the Yellow Pages directory.

If your activity does require development consent and there are threatened species on your property, you may need to carry out an assessment of whether the development will have a significant effect on threatened species (also known as a 'seven part test'²⁰). This is unless you obtain a BioBanking statement.²¹

If the development is likely to have a significant impact on State-listed threatened species, the agreement of the Chief Executive of OEH will be required before development consent can be granted.

To work out whether you are likely to require development consent for a particular development, see Chapter 6.0 - Construction and Other Development.

For more information on BioBanking, see Chapter 13.0 - Trading and Offsetting.

For more information on threatened species assessments, contact the OEH.

1. See: <http://www.environment.nsw.gov.au/threatenedspecies/index.htm>.
2. *National Parks and Wildlife Act 1974* (NSW), ss. 98(3) and 99(2).
3. *National Parks and Wildlife Act 1974* (NSW), s. 98(5).
4. *National Parks and Wildlife Act 1974* (NSW), s. 98(4).
5. *National Parks and Wildlife Act 1974* (NSW), s. 101.
6. The lists are found in schedules to the *Threatened Species Conservation Act 1995* (NSW) and the *Fisheries Management Act 1994* (NSW). You can also access the lists here: <http://www.environment.nsw.gov.au/threatenedSpeciesApp/>
7. See: *Threatened Species Conservation Act 1995* (NSW), Sch. 1, 1A, 2; *Fisheries Management Act 1994* (NSW), Sch. 4, 4A, 5.
8. *National Parks and Wildlife Act 1974* (NSW), s. 118A.
9. *National Parks and Wildlife Act 1974* (NSW), s. 118A.
10. *National Parks and Wildlife Act 1974* (NSW), s. 118B.
11. *Fisheries Management Act 1994* (NSW), ss. 220ZA, 220ZB, 220ZC, 220ZD.
12. *National Parks and Wildlife Act 1974* (NSW), Part 8A.
13. See: <http://www.environment.nsw.gov.au/threatenedspecies/index.htm>.
14. *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Part 13, Div. 1, Subdiv. A.
15. Requirements relating to matters of national environmental significance are outlined under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Part 3 Div. 1. Sections 18 and 18A specifically relate to threatened species.
16. *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 196, 196A, 211, 211A, 254, 254A.
17. *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 196B, 196C, 211B, 211C, 254B, 254C.
18. *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 196D, 196E, 211D, 211E, 254D, 254E.
19. See: <http://www.environment.gov.au>
20. The 'seven part test' lists the matters that must be taken into account when determining whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats. See *Environmental Planning and Assessment Act 1979* (NSW), s. 5A(2).
21. *Threatened Species Conservation Act 1995* (NSW), s. 127ZO.

4.0 Fire Management

What approvals do I need to light fires?

The two types of approvals usually required are:

- a bush fire hazard reduction certificate;¹ or
- a fire permit.

These approvals can be obtained from the local Rural Fire Service (RFS).

You may require both of these approvals before you can burn material on your property.

In some local council areas, you may also need to obtain an approval to burn vegetation or other material from your local council or the Environment Protection Authority (EPA).² Because those authorities can give general approvals by publishing a notice in the local newspaper, you should contact the relevant authority to check its requirements before you burn.

You generally do not need to obtain an approval to burn vegetation if the burning is conducted in the course of carrying on agricultural operations. There is also an exception for the destruction of an animal that has died, or is reasonably suspected of having died, as a result of a disease.³

As well as any requirement to obtain the relevant approval to burn material in the open or in an incinerator, you have a general obligation to prevent or minimise air pollution.⁴ The EPA can publish orders in a newspaper, on television or on the radio that prohibit burning on days when weather conditions are unsuitable for burning.⁵

You should still check with the relevant authorities on the day you intend to burn, even if you have obtained the necessary approvals and permits.

What is hazard reduction work?

Hazard reduction work means establishing or maintaining fire breaks on land, and reducing or modifying material that can help spread bush fires. The creation of a track, trail or road is not considered to be hazard reduction work.⁶

Land managers and owners are responsible for preventing fire escaping from their land. This may involve the carrying out of hazard reduction work to protect existing dwellings, major buildings or other assets susceptible to fire, such as environmental assets.

There are three main methods of hazard reduction:

- hand clearing;
- mechanical clearing; and
- burning: “controlled” or “prescribed” burning which uses fire to reduce the amount of flammable fuel.

The RFS offers a free environmental assessment service for essential hazard reduction works. Wherever practicable, non-burning methods of hazard reduction such as mowing or slashing should be used to avoid the adverse environmental and health effects of burning.

*For more information about hazard reduction, contact your local [RFS](#).*⁷

What is a Bush Fire Hazard Reduction Certificate?

These certificates authorise the carrying out of bush fire hazard reduction activities. They replace the various other environmental approvals that may otherwise be required for burning native vegetation, harming threatened species, creating air or water pollution, or causing soil erosion.⁸

A hazard reduction certificate can be issued free of charge by the RFS, but only if a Bush Fire Risk Management Plan applies to the land. The [provisions of the Bush Fire Environmental Assessment Code must also be considered in determining the conditions that should be attached to the certificate](#).⁹

A Bush Fire Hazard Reduction Certificate cannot be used in areas that are environmentally sensitive such as critical habitat, littoral rainforests or coastal wetlands. A more detailed environmental assessment will be required in these cases.

A certificate becomes effective for a period of 12 months from the date of issue.¹⁰

Certificates are not required for agricultural activities such as burning stubble, sugar cane, and diseased crops, as well as orchard pruning and grazing.¹¹

What are fire permits?

A fire permit is issued by the RFS and authorises a person to light a fire on specified land for a particular purpose. The permit will specify the purpose and will generally be valid for up to 21 days, but a shorter period may also be specified in the permit. Before obtaining a permit, you will need to have obtained a bush fire hazard reduction certificate, or other relevant approvals.¹²

You will need a permit if you want to light a fire for the purpose of clearing land or to make a fire break during the 'bush fire danger period' which is usually from 1 October to 31 March.¹³ However, you should always check with your local RFS Fire Control Centre as the bush fire danger period may be varied due to local conditions, and in some areas the permit may be required all year round.¹⁴

You will also need a fire permit regardless of the time of year if you want to light a fire in a fire district or rural fire district where the fire is likely to be dangerous to a building.¹⁵

If you want to clear land or make a fire break outside the bush fire danger period, you do not need a fire permit. However, you may still have to obtain a bush fire hazard reduction certificate or an approval from another agency.¹⁶

No burning at all may be undertaken on Total Fire Ban days. Fire permits can be suspended or cancelled by the RFS where there is evidence of deteriorating weather conditions. This *may* occur on days of 'High' fire danger ratings, but permits are automatically suspended where the fire danger rating is 'Very High' or above, or if a Total Fire Ban or No Burn Day comes into force.¹⁷

*You can check if there is a Total Fire Ban in force in your area by ringing the RFS or checking the Rural Fire Service [website](#).*¹⁸

No Burn days are declared by the EPA when the potential for smoke pollution is very high.¹⁹

You should contact the OEHL Environment Line on 131 555 the day of your fire to see whether a No Burn day is in place.

It is a standard condition of all permits that a person must be present at the site of the fire from the time that it is lit until it is extinguished.²⁰ Permits are not required during the bush fire danger period if the fire is for the purpose of heating water or cooking, so long as there is at least two metres cleared of combustible material around the fire.²¹

Similarly, a smoke (clean air) approval from EPA or the local council is not required for cooking or recreational fires as long as only dry seasoned wood or other specified fuels are used.²²

Who do I need to notify before lighting a fire?

If you intend to burn off, burn a fire break, or light a fire that might be dangerous to a building, as well as obtaining the required permits (see above), you must provide notice, either orally or in writing to:²³

- your neighbours;
- your local RFS Control Centre; and
- if the fire is in a fire district, the officer in charge of the fire station nearest you.

The notice must include the name of the person proposing to light the fire, as well as the location, purpose, period and time of the proposed fire.²⁴ This notice must be given a minimum of 24 hours before you light the fire, unless specified otherwise in the permit.

If you do not notify the required people or obtain the required permits, the penalties are very serious, and include fines and imprisonment.²⁵

It is always a good idea to contact the RFS before lighting a fire to confirm that you meet the requirements.

What are Bush Fire Risk Management Plans?

Bush Fire Risk Management Plans are prepared by Bush Fire Management Committees in various parts of the State. They set out the requirements for managing risks associated with bush fire hazards. Public notice must be given of draft Bush Fire Risk Management Plans so that interested people can make submissions about their content.²⁶ Once adopted, the plans become relevant to decisions about whether to issue bush fire hazard reduction notices and certificates, as well as fire permits.

These plans may restrict or prohibit the lighting of fires in certain places. The restrictions do not necessarily have to be connected with bush fire risk – for example, a plan can prohibit using fire in a place due to its heritage value, or due to the presence of animals.²⁷

A plan can also set out steps to be taken to reduce fire hazards such as keeping areas of land cleared and using controlled burning. If a plan has been adopted for your area, you can get a copy from your local council.

What are Bush Fire Environmental Assessment Codes?

The Minister for Police and Emergency Services can require the preparation of environmental

assessment codes for particular land.²⁸

In preparing such codes, the Commissioner of the RFS has to have regard to the principles of ecologically sustainable development and the likely environmental impacts of bush fire hazard reduction work on the land.²⁹

There is a Bush Fire Environmental Assessment Code for NSW dated February 2006 which can be accessed on the [RFS website](#).³⁰

The provisions of the Code are considered when the RFS or local council is deciding whether to grant a bush fire hazard reduction certificate.

What do I have to do to prevent bush fires?

As a landholder, you have a legal duty to take certain steps to prevent bush fires. These are:

- any steps which the Bush Fire Co-ordinating Committee advises you to take; and
- any steps included in a Bush Fire Risk Management Plan that applies to your land.³¹

At any time, you are required to ensure that a fire you have lit is safe and under control.

A hazard management officer can issue you with a notice requiring you to do hazard reduction work on your property.³² However, you can object to having to comply with a notice within seven days of being served with the notice, and the hazard management officer must genuinely try to resolve the matter in consultation with you and find a solution acceptable to both parties.³³ If you are still not satisfied, you can appeal to the Commissioner of the RFS.³⁴

If you do not comply with the notice, the maximum penalty is \$5,500 or 12 months imprisonment.³⁵ Also, the Commissioner of the RFS has the right to enter your land to have the works carried out at your expense.³⁶

If you are concerned about possible bush fire hazards on a neighbouring property or any other land, you should report these to the RFS.³⁷

What if I'm going to develop or subdivide my land?

If you need to lodge a development application to your council, you will also need to consider whether your land is on 'bush fire prone land'. The LEP applying to your land will stipulate whether your land is bush fire prone. You can also check the planning certificate (also known as a section 149 certificate) for your property.

Before you can develop bush fire prone land, you must ensure the planned work complies with the requirements set out in [Planning for Bush Fire Protection](#)³⁸ and the requirements contained in [Australian Standard AS3959-1999](#).³⁹

If you want to subdivide bush fire prone land you will need to get an approval from the Commissioner of the RFS called a Bush Fire Safety Authority in addition to development consent. Your local council will arrange for your application to be assessed by the RFS.

For further information on development, see Chapter 6.0 - Construction and Other Development.

What do I do if there is a fire on my property?

If a fire is out of control you must take all possible steps to stop the fire. If you are unable to stop the fire, you must immediately call 000 to alert the nearest RFS or NSW Fire Brigade, or if you cannot contact either organisation, a member of staff of NSW Trade and Investment or the Office of Environment and Heritage. Failure to do so may result in fines and/or imprisonment.⁴⁰

What powers does the Rural Fire Service have?

Officers of the RFS have powers to do various things on private property to control fires and minimise danger, including pulling down or cutting fences, pulling down buildings or structures, removing living or dead vegetation, establishing fire breaks, and using water from your property without compensation.⁴¹

Any damage to your property that occurs in carrying out these works is covered under your fire insurance policy.⁴²

The RFS must give you written notice of its intention to come onto your property, unless entry is needed urgently.⁴³

The Commissioner, or a member of the RFS can also enter your land without consent in order to investigate the cause and origin of a fire up to 24 hours after the fire has been put out.⁴⁴ This power does not extend to entering parts of your land used only for residential purposes, which requires either landholder consent or a search warrant.⁴⁵

An officer of the RFS also has the power to remove any person, obstacle or thing which may interfere with the fire brigade's work, at or near the site of a fire or other emergency.⁴⁶

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1. *Rural Fires Act 1997* (NSW), ss.100C-100G.
 2. *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), Part 3.
 3. *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 9(c); *Stock Diseases Act 1923* (NSW); *Animal Diseases (Emergency Outbreaks) Act 1991* (NSW).
 4. *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 10.
 5. *Protection of the Environment Operations Act 1997* (NSW), s. 133.
 6. *Rural Fires Act 1997* (NSW), Dictionary.
 7. See: http://www.rfs.nsw.gov.au/dsp_content.cfm?CAT_ID=1154
 8. *Rural Fires Act 1997* (NSW), s.100C(4). If a hazard reduction certificate is not obtained, the landholder may need to obtain environmental approvals under other legislation.
 9. *Rural Fires Act 1997* (NSW), s.100F(4). A copy of the *Bushfire Environmental Assessment Code for New South Wales 2006* is available here: http://www.rfs.nsw.gov.au/file_system/attachments/State/Attachment_20060201_50568EEE.pdf.
 10. *Rural Fires Act 1997* (NSW), s.100I.
 11. Fire & Rescue NSW <http://www.fire.nsw.gov.au/page.php?id=635>. See also *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 12(4)(b).
 12. *Rural Fires Act 1997* (NSW), ss. 89-90.

13. *Rural Fires Act 1997* (NSW), ss. 81, 87.
14. See the NSW Rural Fire Service website at: http://www.rfs.nsw.gov.au/dsp_content.cfm?CAT_ID=1114; *Rural Fires Act 1997* (NSW), s. 90.
15. *Rural Fires Act 1997* (NSW), s. 88.
16. *Rural Fires Act 1997* (NSW), s. 86(1A).
17. *Rural Fires Act 1997* (NSW), s. 91.
18. See: http://www.rfs.nsw.gov.au/dsp_content.cfm?CAT_ID=1109
19. See the OEH website at: <http://www.environment.nsw.gov.au/air/aboutnb.htm>.
20. *Rural Fires Regulation 2008* (NSW), cl. 42(a).
21. *Rural Fires Regulation 2008* (NSW), cl. 25.
22. *Protection of the Environment Operations (Clean Air) Regulation 2010*, cl. 12(4)(a). The regulations also allow for the use of LPG, natural gas or proprietary barbecue fuel including fire starter.
23. *Rural Fires Regulation 2008* (NSW), cl. 33(3).
24. *Rural Fires Act 1997* (NSW), ss. 86-88; *Rural Fires Regulation 2008* (NSW), cl. 33.
25. *Rural Fires Act 1997* (NSW), ss. 86-88, 92.
26. *Rural Fires Act 1997* (NSW), s. 57.
27. *Rural Fires Act 1997* (NSW), s. 54(2).
28. Other than land where the State Environmental Planning Policies relating to coastal wetlands and littoral rainforests apply, and land declared to be critical habitat. *Rural Fires Act 1997* (NSW), s.100J; *State Environmental Planning Policy No. 14- Coastal Wetlands*; *State Environmental Planning Policy No. 26- Littoral Rainforests*; *Threatened Species Conservation Act 1995* (NSW).
29. *Rural Fires Act 1997* (NSW), s.100J.
30. See: http://www.rfs.nsw.gov.au/dsp_content.cfm?CAT_ID=536
31. *Rural Fires Act 1997* (NSW), s. 63.
32. *Rural Fires Act 1997* (NSW), s. 66. There are limits on what a hazard management officer can require you to do. For example, they cannot require you to remove trees that are reasonably necessary for a windbreak or the protection of threatened species.
33. *Rural Fires Act 1997* (NSW), s. 67. The hazard management officer has 14 days to confirm, vary or withdraw the notice.
34. *Rural Fires Act 1997* (NSW), s. 68. You have 7 days to lodge an appeal from the date of the hazard management officer's decision, or the end of the 14 day period, whichever is the earlier.
35. *Rural Fires Act 1997* (NSW), s. 66.
36. *Rural Fires Act 1997* (NSW), ss. 14, 70.
37. *Rural Fires Act 1997* (NSW), ss. 74A-74C. Complaints must be in writing, identify the complaint and state the grounds for the complaint
38. Available at: http://www.rfs.nsw.gov.au/dsp_content.cfm?cat_id=900
39. A summary of Australian Standard AS3959-1999 is available from the Rural Fire Service at: http://www.rfs.nsw.gov.au/file_system/attachments/State08/Attachment_20071220_F5C26EE1.pdf
40. *Rural Fires Act 1997* (NSW), s. 64.
41. *Rural Fires Act 1997* (NSW), ss. 25, 26.

- 42. *Rural Fires Act 1997* (NSW), s. 28.
- 43. *Rural Fires Act 1997* (NSW), s. 29.
- 44. *Rural Fires Act 1997* (NSW), s. 33B.
- 45. *Rural Fires Act 1997* (NSW), ss. 33B(3), 33C.
- 46. *Rural Fires Act 1997* (NSW), s. 22A.



5.0 Water Management

Who owns the water on my property?

The State Government controls the use and flow of all water in rivers, lakes and aquifers and water that occurs naturally on or below the surface of land.

You have the right to extract and use water for some purposes without permission from the Government, but generally you need to obtain permission in the form of a licence or approval.

The Office of Water (part of the Department of Primary Industries) is responsible for granting water access licences and water use approvals.

If you occupy land that adjoins a foreshore or river, you may also be required to obtain a licence from the Minister for Planning and Infrastructure, if you wish to install a pump or pipeline.¹

How is water managed in my catchment?

New South Wales is divided into twenty water management areas.² Water sharing plans have been prepared for most rivers in each water management area. These plans set out how water is shared between water users and the environment, and establish water sharing rules that govern the amount of water available for use from time to time.

The Murray-Darling Basin Plan is currently being developed by the Federal Government and will affect how water is managed in the Basin catchments.

The Basin Plan is intended to set sustainable diversion limits for the Murray-Darling system. Water sharing plans that take effect before the Basin Plan commences will be considered an interim water resource which will allow a transition period if lower diversion limits are set by the Basin Plan. Water sharing plans made after the Basin Plan takes effect will need to be accredited by the Commonwealth Water Minister. However, the responsibility for developing water sharing plans remains with the NSW Office of Water, which will continue to develop water sharing plans.

Some areas are not subject to water sharing plans. This means that water in NSW is regulated under two different systems. If you are in an area where a water sharing plan has commenced, the *Water Management Act 2000* (NSW) applies. If not, the *Water Act 1912* (NSW) applies.

*To check whether your area is governed by a water sharing plan, see the Office of Water's [website](#).*³

This chapter will focus on the water rules that apply under the *Water Management Act*.

When can I take water without permission?

You can only take water without permission if you are exercising a 'basic landholder right'.⁴ For example, where you are using water for:⁵

- domestic purposes;
- stock watering; or

- in the exercise of native title rights.

Basic landholder rights apply to water from a river, estuary or lake to which the land has frontage or from any aquifer underlying the land.

Landholders in most rural areas are also allowed to collect a proportion of the rainfall runoff on their property and store it in one or more dams up to a certain size. These are known as harvestable rights dams.⁶

Harvestable rights dams

Harvestable rights dams are dams that are built on minor streams⁷ that do not capture more than 10% of the average annual regional rainfall run-off from the property. These dams do not require a water licence to be built. You can only use the water from these dams on your own property for domestic or stock purposes. You can't supply land other than your own with this water.

The 10% figure is calculated by applying the Maximum Harvestable Right Dam Capacity (MHRDC) multiplier which takes into account local evaporation rates and periods between rainfall replenishments. To calculate your MHRDC, you have to work out the area of your property in hectares. Then you refer to the maps showing the MHRDC multiplier and determine the multiplier line closest to your property. Finally you multiply the area of your property by the MHRDC multiplier, which gives you your MHRDC.

Before building a new harvestable rights dam, you need to consider the capacity of any existing harvestable rights dam that is on your property.

Despite not needing a licence to use the water, you may still need to obtain development consent from your local council to construct the dam.

For a more detailed explanation of the method and for further information on building dams in NSW, see the Office of Water's Dams in NSW Fact Sheets. In particular, the 'What size dam can you build without a licence' [Fact Sheet](#).⁸

For all other uses, you must obtain a water access licence.⁹

It is an offence to take water without, or otherwise than authorised by, a water access licence. If you breach these requirements, you may be liable for a maximum penalty of \$1,100,000 and/or 2 years imprisonment as an individual, or \$2,200,000 as a corporation.¹⁰

What is a water access licence?

A water access licence has two components. First, it entitles you to a share in the available water of a water source. Second, it allows you to take water at specified times, in specified circumstances and from nominated locations.¹¹

Access licences can be granted for specific purposes, such as for utilities. These licences are granted for a fixed term, having regard to how long the activity is likely to take place.¹²

Most other access licences will be granted for an open-ended term. Therefore, a right to access water under the licence will exist until the licence is surrendered or cancelled.¹³

There are a number of different categories of access licences – such as high security and general security licences.¹⁴ The type of licence will determine what priority your licence has when water is made available for extraction.¹⁵

Water access licences are granted by the NSW Office of Water. Application fees apply.

Can I trade my water entitlement?

Entitlements to a share of water under most categories of access licences can be transferred.¹⁶ Generally, a transfer must be approved by the Minister for Primary Industries¹⁷ and must be in accordance with any rules set out in the relevant water sharing plan.

There are two types of water trades: temporary and permanent transfers.¹⁸ These trades may also be referred to as 'dealings'.

Permanent transfers are also called 'permanent trades' or 'assignment of share components'. Either all or part of the water allocation available under a water access licence can be sold to another licence holder.¹⁹

As explained above, there are different categories of water access licences. You cannot transfer access licences between different categories without converting them. For example, local water utility licences²⁰ can only be transferred to another local water utility. Similarly, a major utility's²¹ access licence can only be transferred to another major utility.²²

If you hold a certain category of access licence and wish to convert it to another category or subcategory, you must apply to the Minister.²³

For further information on this process, contact the Licensing Division of the NSW Office of Water on 1800 353 104.

Temporary transfers are also called 'temporary trades', 'water allocation assignments' or 'term transfers'.²⁴ The water allocation account of one licence is debited by a volume and the water allocation of the receiving licence is credited by the same volume. The dealing has no permanent effect on the licence itself.

Temporary transfers are only available on regulated rivers²⁵ and are not available for local water utility and major utility licence holders.²⁶ The transfer must be for at least 6 months.²⁷ Generally, a temporary transfer does not require the Minister's consent, but it must be registered by [Land and Property Information](#) (a division of the Department of Finance and Services) once the agreement is complete.

Some dealings will require the approval of the Minister. For example, when a transfer will change the category of the licence or where the licence is to be subdivided or consolidated.²⁸ If the Minister refuses consent to a particular dealing, you may be able to appeal the decision in the Land and Environment Court.²⁹

*For further information on whether you need Ministerial consent and other considerations when applying for a water licence, see the Office of Water's [website](#).*³⁰

If you co-hold an access licence, it is possible to transfer your holding in the licence without first obtaining the consent of the other holders.³¹

Both permanent and temporary transfers are recorded in the [Water Access Licence Register](#) maintained by Land and Property Information.³² The Register has a separate record for each licence issued which is called a WAL folio. The WAL folio shows licence details, including: the current owner, mortgages and charges over the licence, the share component (volume), extraction component, water source, expiry date and conditions.

Do I need permission to build water works?

In addition to a licence to access water, you may also need an approval to construct works to extract, transfer or store water. If you already have water works on your property that are subject to a permit, you may need to renew that permit as a works approval when it expires.

You may need to obtain an approval from the Minister for Primary Industries if you are planning to build a:³³

- water supply work, such as a dam, weir, tank, pump, pipeline, irrigation channel, bank or levee;
- drainage work, such as a pump, pipe or channel associated with draining water from your land; or
- flood work, such as a causeway, cutting or embankment that is likely to affect the distribution or flow of floodwaters.

Most rural landholders are allowed to build farm dams on hillsides and minor streams that capture up to ten percent of the average runoff for their property without a licence or water supply work approval (see harvestable rights dams above).³⁴

You do not need a water supply work approval to construct a water supply work to allow you to take water from a water source if you are exercising a basic landholder right (such as for domestic or stock watering purposes). However, you will need approval to sink a bore and to construct certain dams (other than harvestable rights dams).³⁵

Most other works or activities designed to extract, capture or store water will require approval from the Office of Water.³⁶

Before undertaking any such activity, contact the Office of Water.

In addition to obtaining approval from the Office of Water, you may also need to obtain some or all of the following approvals before constructing water works:

- authorisation from the Crown land division of the Department of Primary Industries;
- development consent from the council;
- an environment protection licence from Environment Protection Authority; or

a fisheries permit from the Department of Primary Industries.

For more information on development consent see Chapter 6.0 - Construction and Other Development. You should contact each of these authorities to obtain the relevant approvals.

What happens in times of drought?

During times of drought or water shortage, restrictions may be placed on your ability to access water. This will usually be reflected in reductions in the amount of water which is available for extraction.³⁷ Mandatory conditions may also be imposed on a licence whenever the Minister for Primary Industries thinks that it is necessary to give effect to a relevant water management plan.³⁸

Additionally, the priorities that exist in relation to extracting water by different categories of licences may be altered, so that domestic supplies are provided for before commercial uses.³⁹

The Minister for Primary Industries can impose temporary restrictions on taking water from a specified water source.⁴⁰

For more information about water restrictions and water sharing plans, contact the Office of Water.

5.1 IRRIGATION

If you wish to irrigate your property, you will need to work out what water source you will use to irrigate. This will determine whether you need to contact an irrigation infrastructure operator or whether you will need to contact the Office of Water for your own water access licence.

What are irrigation infrastructure operators and what do they do?

There are several types of irrigation bodies in NSW - irrigation corporations (Corporations), private irrigation boards (Boards) and private water trusts (Trusts).

All of these bodies are classified as 'irrigation infrastructure operators'. For convenience, the following section will refer to them collectively as 'infrastructure operators'.

While Corporations are generally larger bodies than Boards and Trusts, all infrastructure operators hold bulk water access licences and provide water to shareholders (individual irrigators).

If you become a member of an infrastructure operator, you don't have to apply for an individual water access licence from the Office of Water. You will need to hold a minimum number of shares in the infrastructure operator, but you are essentially still in a customer relationship with the infrastructure operator. Once you have shares in the infrastructure operator, you will still need to hold other water entitlements issued by the infrastructure operator so that you can have water delivered and be able to extract that water at your property.

As each infrastructure operator has different requirements of its customers or members you should contact your relevant operator to discuss what these are.

Whether you can hold shares in a Corporation, Board, or Trust depends on the location of your land. Land that is serviced by a Corporation is known as land within the Corporation's 'area of operations'.⁴¹ Land that is serviced by a Board is land within a 'private irrigation district'⁴² and land that is serviced by a Trust is located in a 'water supply district'.⁴³

If you are unsure whether your land is within an area of operation, a private irrigation district or a water supply district, you should ask your local council.

How do I begin irrigating?

Before purchasing land (especially if it is part of a new subdivision), you should check with the vendor and any relevant infrastructure operator what the requirements will be if you wish to start irrigating.⁴⁴

Existing irrigation system

If you purchase land and the property has an existing irrigation system that is serviced by an infrastructure operator you will need to contact the relevant Corporation, Board or Trust before you can irrigate. This is because they may have forms for you to complete and you may wish

to vary the previous irrigation system.

No existing irrigation system

If you purchase property without an existing irrigation system, you may need to engage a professional irrigation consultant to design a system that will meet both your requirements and those of your infrastructure operator.

You should also consider what approvals you will need to construct, for example, an irrigation channel.⁴⁵ If you are not going to be provided with water by an irrigation infrastructure operator, you will also need to apply for your own water access licence from the Office of Water before you can take water.

Finally, it is a good idea to consider whether your irrigation system may affect the hydrology (water cycle) of your land, and to consider measures to avoid increasing salinity.⁴⁶

What can I do if I suspect someone is engaging in illegal water activities?

If you suspect that someone is:

- taking water without a licence, or in contravention of their licence conditions;
- taking water in contravention of any water restrictions;
- constructing or using water works without an approval;
- interfering with a meter or failing to keep metering records;
- interfering with an aquifer, (for example dewatering or piercing an aquifer by drilling); or
- harming waterfront land (for example extracting gravel or sand or depositing materials on or in the land)

you can make a confidential report to the Office of Water on 1800 633 362 or by [email](#).⁴⁷

The Office of Water can choose to investigate your report and may follow up with enforcement action. If they do not, you may be able to seek an order from the Land and Environment Court to restrain the illegal activity.⁴⁸

There are serious penalties for breaching water laws, including large fines and terms of imprisonment.⁴⁹

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1. *Crown Lands Act 1989* (NSW), ss. 45(1), 155-156.
 2. *Water Management Act 2000* (NSW), s. 11. For a list of water management areas, see: <http://registers.water.nsw.gov.au/wma/DeterminationSearch.jsp?selectedRegister=Determination>
 3. See: <http://www.water.nsw.gov.au/Water-management/Water-sharing/default.aspx>
 4. *Water Management Act 2000* (NSW), Chapter 3, Pt. 1.
 5. *Water Management Act 2000* (NSW), Chapter 3, Pt. 1, Div. 1 – Div. 3.
 6. *Water Management Act 2000* (NSW), ss. 53, 54.

7. Defined by the Strahler stream ordering method as 1st or 2nd order streams that do not have permanent flow.
8. See: <http://www.water.nsw.gov.au/Water-Licensing/Basic-water-rights/Harvesting-runoff/default.aspx>
9. *Water Management Act 2000* (NSW), Chapter 3, Pt. 2.
10. *Water Management Act 2000* (NSW), ss. 60A, 363B.
11. *Water Management Act 2000* (NSW), s. 56.
12. *Water Management Act 2000* (NSW), ss. 61 and 77A(3).
13. *Water Management Act 2000* (NSW), ss. 69 and 77.
14. *Water Management Act 2000* (NSW), s. 57; *Water Management Regulation* (NSW), Schedule 3.
15. *Water Management Act 2000* (NSW), s. 58.
16. *Water Management Act 2000* (NSW), s. 71M.
17. *Water Management Act 2000* (NSW), ss. 71L and 71M(4).
18. *Water Management Act 2000* (NSW), Chapter 3, Pt 2, Division 4.
19. *Water Management Act 2000* (NSW), s. 71M.
20. Local water utilities are generally local councils exercising water supply and sewerage functions under either the *Water Management Act 2000* (NSW) or the *Local Government Act 1993* (NSW). For further information, see the Office of Water's website, 'Local water utilities' at: <http://www.water.nsw.gov.au/Urban-water/Local-water-utilities/Local-water-utilities/default.aspx>.
21. Major utilities include major electricity generators and the State Water Corporation: *Water Management Act 2000* (NSW), Schedule 2.
22. *Water Management Act 2000* (NSW), ss. 71M(2), 71M(3).
23. *Water Management Act 2000* (NSW), s. 71O.
24. *Water Management Act 2000* (NSW), s. 71N.
25. These are rivers which are declared to be 'regulated rivers' by the Minister for Primary Industries by publication in the NSW Government Gazette. See: *Water Management Act 2000* (NSW), Dictionary. You can check the Gazette to see whether a river is the subject of a declaration by going to the NSW Government's website, <http://www.nsw.gov.au/Gazette>. Generally if a river has a major storage or dam on it, it is likely that it is regulated. See the NSW Office of Water website, 'Regulated Rivers' at: <http://www.water.nsw.gov.au/Water-Management/Monitoring/Regulated-rivers/default.aspx>.
26. *Water Management Act 2000* (NSW), s. 71N(1).
27. *Water Management Act 2000* (NSW), s. 71N(2).
28. *Water Management Act 2000* (NSW), ss. 71M, 71P.
29. *Water Management Act 2000* (NSW), s. 368(e).
30. See: <http://www.water.nsw.gov.au/Water-Licensing/Dealings-and-trade/default.aspx>
31. *Water Management Act 2000* (NSW), s. 71M.
32. *Water Management Act 2000* (NSW), s. 71A. The Register can be searched over the counter at the Land and Property Information office or online at: http://www.lpi.nsw.gov.au/land_titles/public_registers/water_access_licence_register
33. *Water Management Act 2000* (NSW), ss. 90, 92.
34. *Water Management Act 2000* (NSW), ss. 53 and 54.

35. *Water Management Act 2000* (NSW), s. 52.
36. *Water Management Act 2000* (NSW), ss. 90, 91, 91B.
37. *Water Management Act 2000* (NSW), s. 59.
38. *Water Management Act 2000* (NSW), s. 67(2A).
39. *Water Management Act 2000* (NSW), s. 60.
40. *Water Management Act 2000* (NSW), s. 324.
41. *Water Management Act 2000* (NSW), Chapter 4, Pt 1, Divs 4-5.
42. *Water Management Act 2000* (NSW), Chapter 4, Pt 2, Div 2.
43. *Water Management Act 2000* (NSW), s. 221.
44. *Water Management Act 2000* (NSW), ss. 182-184, 214- 215, 236-237.
45. *Water Management Act 2000* (NSW), s. 90.
46. For more information, see the Office of Environment and Heritage website, 'Processes of Salinity' at: <http://www.environment.nsw.gov.au/salinity/basics/processes.htm> .
47. Email: watercompliance@water.nsw.gov.au
48. *Water Management Act 2000* (NSW), s. 336.
49. *Water Management Act 2000* (NSW), Chapter 3, Part 2, Div 1A; Chapter 3, Part 3, Div 1A; Chapter 7, Part 2, Div 4; Chapter 7, Part 3. Penalties are dealt with in s. 363B.



6.0 Construction and Development

Do I need permission to build on my property?

The most common permission required for building or carrying out other works on your property is development consent. Most kinds of work that you may want to do – including building a house, shed, road or dam – is regarded as development.

The local environmental plan (LEP) for your area sets out the types of work that will require development consent. The LEP will tell you if you need development consent for particular works based on the zone that applies to your property. If you are unsure, contact your local council.

In some cases, a state environmental planning policy (SEPP) may apply to the development which will override the provisions in the LEP. It is important to check whether any SEPPs apply to the land or the particular development before you commence work.

If you are building a dam or other structure in or near a watercourse, you should also read Chapter 5.0 – Water Management.

How do I get development consent?

If the LEP in your area states that you need development consent to build something, you will need to submit a development application (DA) to your local council.¹ Depending on the nature of the development and the land on which it is to be carried out, your DA may need to be accompanied by an environmental assessment.²

Some DAs, for development known as State significant development, must be lodged with the Director-General of the Department of Planning and Infrastructure.

How is my development application assessed?

There are several processes for assessing development applications, depending on the type of development. How a development is characterised is important because this will determine how it will be assessed and who will be responsible for making the decision. Importantly, the environmental assessment requirements differ for each category.

The different categories of development are discussed in the following sections.

6.1 STATE SIGNIFICANT DEVELOPMENT (SSD)

These are projects that are considered to be of State or regional significance and are assessed by the Department of Planning and Infrastructure.³

The application must be lodged with the Director-General of the Department of Planning and Infrastructure.

The application must be accompanied by an environmental impact statement (EIS) which includes:⁴

- a summary of the EIS;

- a statement of the objectives of the development;
- an analysis of any feasible alternatives to the carrying out of the development, including the consequences of not carrying out the development;
- an analysis of the development, including a description of the development, the environment likely to be affected by the development, the likely impacts of the development on the environment, the proposed measures to reduce or avoid those impacts and a list of any additional approvals that might be needed (such as a pollution licence from the Environment Protection Authority); and
- reasons justifying the carrying out of the development in the manner proposed.

The EIS must also address all of the Director-General's environmental assessment requirements which are tailored to each project.⁵

The application and EIS will be placed on public exhibition on the [Department of Planning and Infrastructure's website](#) for a minimum of 30 days.⁶ Public notice of the application must be published in a local newspaper and on the website of the Department of Planning and Infrastructure.⁷ A copy of the notice must also be given to people owning or occupying adjoining land, detailing the proposed development and the submission period.⁸

During this time, any person can make a written submission commenting on the proposal.⁹

The Minister for Planning and Infrastructure is the decision-maker for all SSD projects.¹⁰ However, this power has been delegated to the Department of Planning and Infrastructure or the Planning Assessment Commission (PAC) in many cases, except where the SSD project is proposed by a public authority.¹¹

When assessing SSD projects, the decision-maker must take a number of things into account, including:¹²

- any environmental planning instrument (such as a local environmental plan or State Environmental Planning Policy);
- Coastal Zone Management Plans;
- the likely impacts of the development, including environmental impacts on the natural and built environments, social impacts and economic impacts;
- the suitability of the site for the development;
- public submissions; and
- the public interest.

The decision-maker can approve the development subject to conditions,¹³ and these conditions are legally binding. Conditions are designed to minimise the adverse impacts of the development. In practice, standard conditions are often attached.

6.2 DESIGNATED DEVELOPMENT

Designated development refers to high-impact developments (e.g. likely to generate pollution), or developments which are located in or near an environmentally sensitive area.¹⁴

The types of projects that qualify as designated development include certain agriculture produce industries, aquaculture, mines and CSG developments, electricity generating stations,

marinas, sewerage systems, shipping facilities, waste management facilities and wood or timber milling or processing works.¹⁵ In order to qualify, many of these types of development must meet a number of thresholds relating to the size, type and location of the development.¹⁶

The development application must be accompanied by an environmental impact statement (EIS).¹⁷

The EIS must include the same things as outlined above under State significant development.

If a designated development is proposed on land containing critical habitat or is likely to significantly affect threatened species, populations or ecological communities, then the development application must be accompanied by a species impact statement (SIS).¹⁸

In deciding whether there is likely to be a significant impact on threatened species, the applicant must apply a '7-part test'.¹⁹ This includes factors such as whether the action is likely to place a viable local population of the species at risk of extinction, and whether the action is likely to result in the fragmentation or isolation of habitat. Similarly, a SIS must be prepared if there is likely to be a significant impact on listed threatened fish or marine vegetation.²⁰

Local councils are responsible for assessing designated development but this role can also rest with a [Joint Regional Planning Panel](#)²¹ which is an independent planning body set up by the Minister for Planning and Infrastructure in certain areas.²²

When a council receives a development application for designated development, it must place the application and any accompanying documents on public exhibition for a minimum of 30 days.²³ The application will usually be available on the council's website and at the council offices.

The council must then notify the community that the development application is on exhibition by:

- publishing notice in a local newspaper;²⁴
- exhibiting a notice on the land to which the application relates;²⁵
- giving written notice to any other public authorities which may be interested in the application;²⁶ and
- giving written notice to:²⁷
 - people who own or occupy adjoining land; and
 - if practicable, to any other people who own or occupy land that may be adversely impacted by the development.

During the exhibition period, any person can write a submission in support of or objecting to the proposed development.²⁸

The council or JRPP will either approve or reject the development application. Approvals can be subject to a range of conditions, which are legally binding.

When assessing designated developments, the decision-maker must take a number of things into account, including:²⁹

- any environmental planning instrument (such as a local environmental plan or State Environmental Planning Policy);
- any proposed environmental planning instrument that is or has been the subject of public consultation;

- any development control plan;
- Coastal Zone Management Plans;
- the likely impacts of the development, including: environmental impacts on the natural and built environments, social impacts and economic impacts;
- the suitability of the site for the development;
- public submissions; and
- the public interest.

Designated developments which are proposed on land that is critical habitat or which are likely to significantly affect threatened species cannot be approved without the agreement of the Chief Executive of the Office of Environment and Heritage, or in some cases, the Minister for Environment.³⁰ In deciding whether or not to agree to the development, the Chief Executive or Minister for Environment must take a range of factors into account, including any species impact statement, any public submissions, and the principles of ecologically sustainable development.³¹ The Chief Executive or Minister for Environment has the power to either approve or refuse the development application, or to impose additional conditions on the development to provide for the protection of threatened species.³²

6.3 LOCAL DEVELOPMENT

These are generally low impact developments such as houses with a sub-category known as exempt and complying development.³³

Development applications for local development comprise the majority of development applications. In most cases, the applicant will lodge a development application with the local council. The development application may or may not be publicly exhibited, depending on council policy.³⁴ This means the public may or may not have a chance to comment on the application.

Generally, a statement of environmental effects (SEE) will need to accompany a development application. The SEE must indicate the environmental impacts of the development, how the impacts have been identified and the steps that will be taken to protect, or to lessen the harm to the environment.³⁵

Once council has assessed the application, it will make a decision on it. Development applications can be approved subject to conditions, which are legally binding.

Some local development – known as exempt and complying development - may not require a development application and can proceed through a fast-tracked development process.

Only certain types of development qualify for this process. The categories of exempt development and complying development are included in all new Local Environment Plans (LEPs) made according to the [*Standard Instrument – Principal Local Environmental Plan*](#). For LEPs that have not yet been updated to the Standard Instrument, the categories and exempt and complying development are included in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.³⁶ Types of exempt development include: animal shelters,³⁷ garden sheds, gazebos and greenhouses,³⁸ earthworks and retaining walls,³⁹ farm buildings and structures,⁴⁰ fences,⁴¹ rainwater tanks,⁴² and windmills.⁴³

Developments carried out on an environmentally sensitive area cannot be classified as exempt or complying.⁴⁴

Exempt development is development that is considered to have a low environmental impact.⁴⁵ The types of development classified as exempt development are listed as 'exempt' under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or the relevant LEP. Usually, the development must also meet the provisions of the [*Building Code of Australia*](#). If there is no relevant code, the development must be structurally sound. Exempt developments do not need to be assessed and do not require approval.⁴⁶

Development cannot be exempt if it is proposed over an environmentally sensitive area of State significance.

Complying development is fairly routine development such as extensions to houses and general housing on a range of lot sizes. To be complying development, the development must be permissible with consent in the zone where it will be carried out and must meet the provisions of the [*Building Code of Australia*](#).⁴⁷

A very simple assessment process is followed and a certificate can be issued by either a council or an accredited certifier.⁴⁸ Certifiers are overseen by the Building Professionals Board.

The process is much quicker than for other types of development. Complying development is meant to be determined within ten days.

6.4 PART 5 ASSESSMENTS

In some cases, a proposed development will not need development consent at all. This may be because a law or policy says the activity doesn't need consent or it may be that the proponent is also the consent authority. Part 5 developments are often infrastructure developments carried out by a government agency. An example of a Part 5 development is where the local council proposes the construction of roads or the local electricity authority proposes new electricity infrastructure. These developments do not go through a development approval process, but the proponent must still examine and take into account the likely impact of that activity on the environment.⁴⁹

The most common form of environmental assessment for Part 5 projects is called a Review of Environmental Factors (REF).

A REF takes a preliminary look at the likely environmental, social and economic impacts of a proposed development. If the proposal is likely to have a significant effect on the environment, an environmental impact statement (EIS) must be prepared and placed on public exhibition for at least 30 days, during which time the public can make submissions.⁵⁰ If the activity is on land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats, then a species impact statement (SIS) may also be required.⁵¹

After the environmental assessments have been completed the proponent may decide to proceed as planned, to not undertake the activity, or to make changes to the activity to reduce its environmental impact.

What can I build without development consent?

If the LEP says the development does not require consent, you do not need development consent to build.⁵² Even where the LEP says the development needs consent, the development may fall into a category of development known as 'exempt and complying development' in which case consent will either not be needed or a fast-tracked assessment

process will apply. See above for more information.

Is development consent the only permission I need?

Sometimes you will need approvals or permits in addition to a development consent. For example, you may need a permit to clear native vegetation or a water access licence. These types of developments, where approval is required from different authorities are known as 'integrated developments'.⁵³

Other Chapters in this booklet (e.g. Chapter 2.0- Vegetation Management and Chapter 5.0- Water Management) set out some of the approvals you might need, such as property vegetation plans and water access licences. You should also check with your local council.

If you submit a DA to council, and your proposed development requires additional approvals, council will arrange for copies of your DA to be sent to the relevant agencies.⁵⁴

If you are proposing State significant development, these extra approvals may not be required or there may be a requirement that they be granted consistently with the project approval.⁵⁵

If you intend to subdivide or carry out development on your land you should also check the relevant [Bush Fire Prone Land Map](#).⁵⁶

What happens if I don't get permission to build?

If you carry out construction or other development without development consent, you may be breaking the law.⁵⁷ The local council can issue an order for you to take certain action, including demolishing any illegal structures.⁵⁸

Any person, including the council, can bring an action against you in the Land and Environment Court if you breach the planning laws.⁵⁹ The Court has the power to impose a range of penalties, including ordering the removal of buildings or works that have been constructed illegally.⁶⁰

6.5 COMPULSORY ACQUISITION

In order to proceed with some major developments, such as extending a road or highway, the government may need to compulsorily acquire privately owned land. Government authorities are legally permitted to do this, so long as they require the land for a public purpose, they follow the procedure set out in the applicable legislation and they award just compensation.⁶¹

The procedure for determining just compensation is. Broadly, the process is:

- all owners and/or lawful occupants (such as lease holders) must be given notice of the proposed acquisition;⁶²
- generally, the notice has to be given at least 90 days before the proposed acquisition⁶³ and must contain information including the owner's right to claim compensation;⁶⁴
- as a former owner, you have a right to occupy the land until you have been paid the compensation.⁶⁵

The Valuer-General determines the amount of compensation that a landowner is entitled to by considering a number of factors including, but not limited to, the market value of your land.⁶⁶

If you object to the amount of compensation offered to you, you can appeal to the Land and Environment Court within 90 days of receiving the compensation notice.⁶⁷

6.6 SEPTIC SEWERAGE

If you have, or intend to install, construct or alter, a septic sewerage system you are required to obtain approval from your local council.⁶⁸ The following documents are required in any application for approval:⁶⁹

The application must be accompanied by a plan, to scale, showing the location of:

- a scaled plan, showing the location of the proposed septic system, any related effluent application areas, any buildings and any environmentally sensitive land⁷⁰ within 100m of the system and any related drainage lines or pipework;
- the full specifications of the proposed system;
- a site assessment of the system in light of the climate, geology, hydrology, vegetation etc.;
- a statement including the number of people living on the site; and
- an identification of the operating and maintenance requirements, a plan to meet those requirements and a plan to address any breakdown of the system.

Your local council may also have extra requirements. Therefore, you should contact your council to find out what these are before you lodge your application.

Once you have obtained an approval, you must still ensure your septic system is maintained in accordance with the relevant environmental and health standards. Approvals for sewerage work must comply with the [*Plumbing and Drainage Code of Practice*](#).⁷¹

It is an offence to fail to obtain an approval or fail to comply with any conditions attached to your approval, and you could be fined up to \$2,200.⁷² Your council may issue you with a penalty notice⁷³ or, if the breach is serious, prosecute you in court for these offences. Your council can also issue orders requiring you to take action to comply with an approval, take action to maintain the system in a safe and healthy condition, or to store, treat or dispose of the septic waste in a specified manner.⁷⁴

If you do not have approval for your septic system or do not maintain it properly, you may also be liable for an offence under NSW pollution laws.⁷⁵

Your council may charge a fee for carrying out inspections of your septic system. Any fees should be set out in council's revenue policy and fee changes should be set out in the Management Plan.⁷⁶ Your council may also charge a fee to renew your approval each year.

Each council area has slightly different approval and regulatory processes for septic systems. You should contact your local council to find out what your specific obligations are.

The NSW Department of Local Government has published some useful materials for installing and operating septic systems. The ['Easy Septic Guide'*](#) and the [*'Environment and Health Protection Guidelines'*](#).⁷⁷*

6.7 EXCAVATION WORK

Do I have to give notice if I want to excavate on my land?

It is now compulsory for you to ring the [Dial Before You Dig](#)⁷⁸ line before you start any excavation work on your land, even if you have development consent for the work. This is to prevent damage to underground pipes and cables for utilities such as gas, electricity or water that may be located under your land. You must call no more than 30 days before you start the work.⁷⁹ If the work may affect underground infrastructure, you will be sent information about the location and nature of the infrastructure. You must comply with any conditions or modifications to your work that Dial Before You Dig or the infrastructure operator requires.

There are some exceptions to the requirement to notify, such as excavations:⁸⁰

- to a depth of less than 150mm with machinery or power tools;
- to a depth of less than 300mm without machinery or power tools;
- to a depth of less than 250mm for ploughing on land zoned rural or rural-residential; or
- in an emergency to prevent injury, death or serious damage to property or the environment.

However, it's still a good idea to ring the Dial Before You Dig line if you are at all unsure about whether you can undertake the digging work.

The penalty for interference with electricity or gas works is now up to \$22,000 for individuals and \$440,000 for corporations. You may also face imprisonment for up to 5 years for this offence.⁸¹

WorkCover has prepared the '[Work Near Underground Assets Guideline](#)'.⁸² This document contains practical advice and information on meeting the requirements of the OH&S requirements for excavation work.

6.8 WIND FARMS

What do I need to know about proposed wind farms?

Increasingly, rural landholders are being approached by companies seeking to build wind farms on their properties. Companies seeking to develop wind farms will have to follow the relevant development assessment process planning laws. Some wind farm proposals will be State significant development and assessed by the Department of Planning and Infrastructure.⁸³ The Department has produced [draft guidelines](#) for wind farm developments.⁸⁴

Wind farm proposals may also require assessment under Federal environmental law.⁸⁵ For example, if the wind farm is proposed for land that contains listed threatened species or communities, or listed migratory species, it may need to be referred for additional environmental assessment if it will or may be likely to have a significant impact on those species. The Federal Department of Sustainability, Environment, Water, Population and Communities has published a [policy statement](#) to guide the wind farm industry as to the circumstances in which this extra level of assessment will be required.⁸⁶

Leasing your land to a renewable energy company for the purposes of establishing a wind farm can be an extra source of income. However, you should be aware of not just the assessment processes but also your legal rights regarding these proposals. This is because, for example, the wind farm company may be required to enter into a contract with you to set

out the terms upon which they can access your land and use it for their purposes. The contract may prohibit you from using your land in certain ways, even if the company decides not to exercise their option to buy or lease your land.

You should obtain independent legal advice before entering into a contract with a wind farm company for the sale, lease or option to sell or lease your land.

1. *Environmental Planning and Assessment Act 1979* (NSW), ss. 76A(1) and 78A.
2. *Environmental Planning and Assessment Act 1979* (NSW), s. 78A(8) and *Environmental Planning and Assessment Regulation 2000* (NSW), Schedule 1, Part 1.
3. They are assessed under Part 4, Div. 4.1 of the *Environmental Planning and Assessment Act 1979* (NSW). Types of SSD and SSI are listed in *State Environmental Planning Policy (State and Regional Development) 2011*, Sch. 1-4.
4. *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 2, cl. 7.
5. *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 2, cl. 3(4).
6. See: <http://majorprojects.planning.nsw.gov.au/page/on-exhibition/>
7. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 84.
8. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 84(2).
9. *Environmental Planning and Assessment Act 1979* (NSW), s. 89F(3).
10. *Environmental Planning and Assessment Act 1979* (NSW), s. 89D.
11. *Environmental Planning and Assessment Act 1979* (NSW), s. 23.
12. *Environmental Planning and Assessment Act 1979* (NSW), s. 79C.
13. *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(1)(a).
14. *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 3. An environmentally sensitive area includes coastal waters, SEPP 14 coastal wetlands, SEPP 26 littoral rainforest, aquatic reserves, Ramsar wetlands, lands of high Aboriginal cultural significance or high biodiversity significance (as identified in a LEP), State Conservation Areas, land on the State Heritage Register, land reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes, or land identified as critical habitat.
15. *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 3.
16. The thresholds are set out in *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 3.
17. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 50, Sch. 2, Part 2 (1)(e).
18. *Environmental Planning and Assessment Act 1979* (NSW), s. 78A(8)(b).
19. *Environmental Planning and Assessment Act 1979* (NSW), s. 5A.
20. Protected under the *Fisheries Management Act 1994* (NSW). See *Environmental Planning and Assessment Act 1979* (NSW), s. 5C.
21. For more information on Joint Regional Planning Panels, see: <http://jrpp.nsw.gov.au/>
22. *Environmental Planning and Assessment Act 1979* (NSW), s. 23G. For more information, see: <http://www.jrpp.nsw.gov.au/>.
23. *Environmental Planning and Assessment Act 1979* (NSW), s. 79.
24. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 80.

25. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 79.
26. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 77.
27. *Environmental Planning and Assessment Act 1979* (NSW), s. 79(b).
28. *Environmental Planning and Assessment Act 1979* (NSW), s. 79.
29. *Environmental Planning and Assessment Act 1979* (NSW), s. 79C.
30. *Environmental Planning and Assessment Act 1979* (NSW), s. 79B.
31. *Environmental Planning and Assessment Act 1979* (NSW), s. 79B(5).
32. *Environmental Planning and Assessment Act 1979* (NSW), ss. 79B(8), (9).
33. They are assessed under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW). The standards applying to exempt and complying development are contained in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
34. Council's public notification and exhibition requirements are usually found in the Development Control Plan. Note, the provisions of the DCP are not binding, except those that relate to public notification and exhibition.
35. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 50, Sch. 1 Part 2 cl. 2(1)(c).
36. [*State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008*](#)
37. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Pt. 2, Div. 1, Subdivision 3A.
38. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Pt. 2, Div. 1, Subdivision 9.
39. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Pt. 2, Div. 1, Subdivision 15.
40. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Pt. 2, Div. 1, Subdivision 16.
41. (NSW) *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Pt. 2, Div. 1, Subdivision 19.
42. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Pt. 2, Div1, Subdivision 32.
43. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Pt. 2, Div. 1, Subdivision 41.
44. *Standard Instrument – Principal Local Environmental Plan*, cl. 3.3; *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, cl. 1.19.
45. *Environmental Planning and Assessment Act 1979* (NSW) s. 76(2).
46. *Environmental Planning and Assessment Act 1979* (NSW) s. 76(1).
47. *Standard Instrument – Principal Local Environmental Plan*, cl. 3.2; *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
48. *Standard Instrument – Principal Local Environmental Plan*, cl. 3.2; *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
49. *Environmental Planning and Assessment Act 1979* (NSW), s. 111(1).
50. *Environmental Planning and Assessment Act 1979* (NSW), ss. 112, 113.
51. *Environmental Planning and Assessment Act 1979* (NSW), s. 112(1B).

52. *Environmental Planning and Assessment Act 1979* (NSW), s. 76.
53. (NSW) *Environmental Planning and Assessment Act 1979* (NSW), s. 91.
54. (NSW) *Environmental Planning and Assessment Act 1979* (NSW), s. 79B and 91A(2).
55. *Environmental Planning and Assessment Act 1979* (NSW), ss. 89J, 89K.
56. See: http://www.rfs.nsw.gov.au/dsp_content.cfm?cat_id=1052
57. *Environmental Planning and Assessment Act 1979* (NSW), ss. 76A(1), 125.
58. *Environmental Planning and Assessment Act 1979* (NSW), s. 121B.
59. *Environmental Planning and Assessment Act 1979* (NSW), s. 123.
60. *Environmental Planning and Assessment Act 1979*, s. 124.
61. *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), s. 54.
62. *Land Acquisition (Just Terms Compensation) Act 1991*(NSW), s. 12.
63. *Land Acquisition (Just Terms Compensation) Act 1991*(NSW), s. 13(1).
64. *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), s. 15.
65. *Land Acquisition (Just Terms Compensation) Act 1991*(NSW), s. 34.
66. *Land Acquisition (Just Terms Compensation) Act 1991*(NSW), s. 47; Part 3, Div 4.
67. *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), s. 66. Appeals of this type are heard in Class 3 of the Court's jurisdiction which is a 'no costs' jurisdiction. This means that each party bears their own costs and if you lose you will not have to pay the other side's costs.
68. *Local Government Act 1993* (NSW), s. 68, Part C, Items 5 and 6.
69. *Local Government (General) Regulation 2005* (NSW), cl. 26.
70. *Environmental Planning and Assessment Regulation 2000* (NSW), Schedule 3, Part 4. 'Environmentally sensitive land' includes: land identified in an EPI as an environment protection zone (such as a coastal wetland under SEPP 14 or littoral rainforest under SEPP 26); national parks; historic sites; nature reserves; wilderness areas; aquatic reserves; and land reserved or dedicated within for the preservation of flora, fauna, geological formations or for other environmental protection purposes,
71. *Local Government Act 1993* (NSW), ss. 13, 16, Schedule 1, Part 2, cl. 15. The Code of Practice is available here: http://www.water.nsw.gov.au/ArticleDocuments/36/plumbing_nsw_code_of_practice_plumbing_drainage_2006.pdf.aspx
72. *Local Government Act 1993* (NSW), s. 626(3).
73. If you are served with a penalty notice, you may pay the fine in the notice (which may not be more than the maximum prescribed penalty) or elect to go to court if you wish to dispute the fine: *Local Government Act 1993* (NSW), s. 679(2).
74. *Local Government Act 1993* (NSW), s. 124.
75. For example, a failure to maintain your septic system may amount to willfully or negligently causing a leak or spill of a substance that harms the environment: *Protection of the Environment Operations Act 1997* (NSW), s. 116.
76. See: the Department of Local Government's website, 'On-site Sewage Management' at: <http://www.dlg.nsw.gov.au/dlg/dlghome/PublicTopicsIndex.asp?mi=0&ml=10&id=10>
77. See: <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/onsite.pdf>
78. See: <http://1100.com.au/default.aspx> or call 1100.

79. *Electricity Supply Act 1995* (NSW), s. 63Z; *Gas Supply Act 1996* (NSW), s. 64C; *Electricity Supply (General) Regulation 2001* (NSW), cl. 104C; *Gas Supply (Safety and Network Management) Regulation 2008*, (NSW) cl. 34C.
80. *Electricity Supply (General) Regulation 2001* (NSW), cl. 104B(2); *Gas Supply (Safety and Network Management) Regulation 2008* (NSW), cl. 34B(2).
81. *Electricity Supply Act 1995* (NSW), s. 65; *Gas Supply Act 1996* (NSW), s. 66.
82. Available here: http://www.workcover.nsw.gov.au/formspublications/publications/Documents/work_near_underground_assets_1419.pdf
83. *State Environmental Planning Policy (State and Regional Development) 2011*, Sch. 1 (20).
84. See: <http://www.planning.nsw.gov.au/renewable-energy>
85. Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
86. See: <http://www.environment.gov.au/epbc/publications/pubs/wind-farm-industry.pdf>



7.0 Pollution

7.1 RUBBISH

Do I need permission to dump rubbish on my land?

You will sometimes need permission to dump rubbish on your land, depending on the type of waste, the extent of the dumping and the source of the rubbish.¹ You must ensure that any rubbish dumped on your property is not likely to cause harm and does not cause harm to the environment.²

To find out if you need permission, contact your local council or the Office of Environment and Heritage (OEH).

Do I need permission to use rubbish as landfill?

Using rubbish as landfill may require development consent from your council. You should contact your council to see if you need consent for your proposed landfill. You might also need a licence from the Environment Protection Authority (EPA), depending on the amount and type of landfill and where the landfill is from.³

Using rubbish as landfill may pollute surface or groundwater. Contact the OEH to check whether you need a licence.⁴ Polluting water without a licence is a serious offence.

For more information on water pollution offences, see Chapter 7.2 – Water Pollution.

Can I burn rubbish on my property?

Whether or not you can burn rubbish (including dead and dry vegetation) on your property will depend on the local government area in which you live.⁵

You should check with your local council to confirm the specific requirements for your area.

In all cases, you must make all reasonable efforts to minimise the air pollution impacts of the burning. This may include taking into account the wind direction, potential smoke impacts and the nature of the material being burnt.⁶

There are some items that are never permitted to be burnt, such as tyres, coated wire, treated timbers, paint tins and solvent containers.⁷

For more information, contact the OEH and also see Chapter 4.0 – Fire Management and Chapter 7.3 – Air Pollution.

Do I need permission to dump rubbish on public land?

It is an offence to dump rubbish on public land without permission.⁸ It is also an offence to transport and dump rubbish at a place that cannot be lawfully used as a waste facility.⁹

Littering in a public place is an offence with a maximum penalty of \$2,200.¹⁰ If the rubbish is likely to cause harm to people, animals, premises or property, the maximum penalty increases to \$3,300 for an individual and \$5,500 for a corporation.¹¹

If rubbish is dumped on private or public land without permission in a way that harms or is

likely to harm the environment, the maximum penalty is \$5,000,000 for a company, or \$1,000,000 and/or 7 years imprisonment for an individual.¹²

Case Study: Prosecution for illegal dumping and pollution of water

Mr Wattke and Mr Geerdink were each charged with two dumping offences. They were also each charged with an offence of polluting water.¹³ Mr Wattke was charged as a director of Hook-It-Waste Pty Ltd, with negligently disposing of waste including leachate and sewage, causing harm or likely to harm the environment. Mr Geerdink was charged with the same offence in his capacity as a person involved in the company's management.

Between July 2007 and January 2008, employees of the company transported waste to a property in Ilford, where it was dumped. An employee located at the property was instructed to 'keep quiet' about certain waste deliveries to the property. The company also ignored the local council's Emergency Order to cease dumping and failed to comply with two Prosecutor's Notices to clean up the waste.

While the Court held that the nature of the negligent disposal offences were towards the upper spectrum of severity and could attract a term of imprisonment, the Court imposed a community service order of 460 hours and fines of \$50,000 for each of the defendants. The defendants were also fined \$10,000 in relation to the water pollution offences and ordered to

It is always safest to check with the council and the OEHL to find out whether you need permission before dumping any rubbish.

7.2 WATER POLLUTION

What restrictions apply to activities that pollute water?

There is a general ban on polluting water without permission.¹⁴ The ban applies to surface water and groundwater.

Any matter placed in water could be a pollutant depending on the effect the matter has on the water. For example, if the matter makes the water undrinkable for people or farm animals, or the condition of the water is changed, then the matter pollutes the water.

Excessive fertiliser run-off increases the likelihood of algal blooms, which may result in fish deaths. Pesticide use and disturbing acid sulphate soils may also be activities that result in water pollution.

For more information on fertilisers and pesticides, see Chapter 8.0 – Pesticides.

For more information about management of acid sulphate soils, contact your [Catchment Management Authority](#) (CMA)¹⁵ or your local council.

What about dumping things near a water course?

Even if you don't put the matter directly in the water, it may still pollute the water. If you place matter somewhere where it falls, is washed, blown or leaches into the water, then you may be responsible for polluting the water.¹⁶

It is also an offence to place the matter where it is likely to get into the water and cause pollution, such as in a drain or gutter or a dry river bed, even if the matter doesn't actually reach the water.¹⁷

How do I get permission to pollute water?

The Office of Environment and Heritage (OEH) encourages landholders to conduct activities on their properties so as to minimise any risk of water pollution. However, if necessary, you can apply for a pollution licence from the Environment Protection Authority (EPA).

For more information, contact the [EPA](#).¹⁸

What happens if I don't have permission?

Polluting waters without a licence is a criminal offence.¹⁹

The maximum penalty for a corporation is \$1,000,000, with an additional maximum penalty of \$120,000 for each day the offence continues.²⁰ For individuals, the maximum penalty is \$250,000 with a \$60,000 additional penalty for each day the offence continues.²¹

7.3 AIR POLLUTION

Do I need an approval for odours produced on my property?

If you propose to carry out an activity that causes an 'offensive odour', you may require a pollution licence from the Environment Protection Authority (EPA).²² An offensive odour is an odour that is likely to be harmful to another person or interfere with the comfort of a person on another property.²³

In particular, you will need a pollution licence if you propose to carry out a 'scheduled activity'. Examples of [scheduled activities](#) include large piggeries, poultry farms and feedlots.²⁴

For more information about pollution licences, contact the Environment Protection Authority.



Scheduled activities

Scheduled activities are activities for which an environment protection licence (a licence to pollute) is required.²⁵ The licence usually attaches to the premises at which the activity is carried out so the activities listed below are premises-based.

Examples of premises-based scheduled activities are:

Agricultural processing,
Chemical storage,
Extractive activities,
Livestock intensive and livestock processing activities,
Logging operation,
Mining for coal,
Petroleum and fuel production,
Sewage treatment, and
Wood or timber milling or processing.

For each type of premises-based scheduled activity there is a criteria for determining whether the activities on those premises require a pollution licence. The criteria generally relate to the size or intensity of the activity, or the sensitivity of the receiving environment.

For example, an extractive industry which produces more than 30,000 cubic metres per year, or a cement works that has a capacity of 150 tonnes per day or more, must have a pollution licence.

Contact the [EPA](#) to check if you require a pollution licence.²⁶

Do I need a pollution licence to light fires on my property?

In general, you don't need a pollution licence to light fires. However, the EPA can publish an order in the newspaper and on the television or radio banning open fires and the use of incinerators if weather conditions mean that these activities are likely to contribute to air pollution.²⁷ In addition, you need to take all reasonable steps to minimise air pollution such as ensuring that what is being burnt is not wet. Failure to do so is an offence.²⁸ You may also need other approvals to light fires on your property.

For more information on lighting fires, see Chapter 4.0 – Fire Management.

How is air pollution from pesticides regulated?

For information about the regulation of pesticides, see Chapter 8.0 – Pesticides.

What about other types of air pollution?

If you propose to carry out a [scheduled activity](#) you will need a pollution licence. This pollution licence may place limits on the air pollution that can be caused by the activity.²⁹ In addition, there are set limits for air impurities that can be emitted from premises at which either

scheduled or non-scheduled activities are taking place.³⁰

*Check with the [EPA](#) to find out whether your proposed activity requires a pollution licence.*³¹

7.4 NOISE POLLUTION

How much noise can I make on my property?

There is no general prohibition on causing noise on your property.

However, if you are causing an 'offensive noise', a police, council, or Environment Protection Authority (EPA) officer may issue a noise abatement direction, which is a temporary direction requiring you to control the noise.³² In addition, the council may issue a noise control notice to place ongoing restrictions on the noise.³³

An offensive noise is one which is likely to interfere with the comfort of or is harmful to a person on another property.³⁴

It is an offence to operate plant that causes noise outside of your property if the noise is a result of a failure to properly maintain or operate that plant in an efficient manner.³⁵

If you are carrying out a [scheduled activity](#) you may need a pollution licence from the EPA which will tell you how much noise you can make.³⁶

7.5 CONTAMINATED LAND

Contaminated land is land where a substance is present at a higher concentration than is normally found on land in the same area and which presents a risk of harm to human health or to the environment.³⁷

It also includes land where contaminants have migrated onto it from another site.³⁸

The Environment Protection Authority (EPA) can declare land to be significantly contaminated.³⁹ Once a declaration has been made it must be notified in the NSW Government Gazette, a notice must be served on the landowner and anyone can make a submission, within 21 days of the notice, as to whether the EPA should serve a management order in relation to the land.⁴⁰

The EPA is required to keep a [Register](#) of notices that they have issued.⁴¹

You should note that the Register is not a record of all contaminated land in NSW. It only contains records for which formal notices have been issued.

In order to determine whether the land is significantly contaminated, the EPA may issue a preliminary investigative order to people including the land owner or a person that has carried out activities on the land.⁴²

The EPA is only responsible for regulating *significantly* contaminated sites, although it has a general duty to examine and respond to any information that it receives of actual or possible contamination of land.⁴³ In cases where the contamination does not reach the threshold of 'significant', the responsibility for regulating the site falls to the relevant local council.

What should I do if I think my land is contaminated?

If you think that your land or land that you are using has been contaminated, you have a legal obligation to report the suspected contamination in writing to the EPA.⁴⁴ The maximum penalty for failing to notify the EPA is \$77,000 for an individual and \$165,000 for a corporation.⁴⁵ Further penalties apply for each day that the person or corporation fails to notify the EPA.⁴⁶

As well as writing to the EPA you should report any suspected contamination incidents immediately to the OEH on 131 555.

What is remediation?

Remediation involves removing, reducing, mitigating or containing the contamination of the land. It includes eliminating or reducing any hazard arising from the contamination and preparing a long-term management plan for the land to achieve these aims.⁴⁷

Once the EPA has declared land to be significantly contaminated, the EPA can issue a management order which directs a person to carry out management actions on the land which may include remediation work.⁴⁸ Such orders are supposed to be directed to the person responsible for the significant contamination in preference to the current owner of the land. The EPA can also direct a person to submit for approval a plan of management which describes how the person proposes to deal with the contamination.⁴⁹

The actions which a management order can require a person to carry out include:⁵⁰

- investigating the nature and extent of the significant contamination or harm;
- remediating the land;
- erecting a fence, wall, bund or other barrier on the land;
- treating, storing, containing or removing any solids or liquids, including any soil, sand, rock or water;
- vacating the land or ceasing activities on it;
- refraining from disturbing the land below a certain depth;
- reporting groundwater contamination to the Minister administering the *Water Management Act 2000*; or
- notifying the EPA of any change in ownership or occupancy of the land.

Reflecting the fact that remediation is often a very slow process, the EPA can serve a person who is subject to a management order or an approved voluntary management proposal with an on-going maintenance order.⁵¹

Currently, the failure to comply with a management order attracts a maximum penalty of \$66,000 and the failure to comply with an ongoing maintenance order attracts a maximum penalty of \$33,000 for individuals. Higher penalties apply for corporations.⁵²

Remediation works may also require development consent.⁵³

1. *Protection of the Environment Operations Act 1997* (NSW), s. 144.

2. *Protection of the Environment Operations Act 1997* (NSW), ss. 115, 142A; *Protection of the Environment Operations (Waste) Regulation 2005* (NSW), cl. 48.
3. *Protection of the Environment Operations Act 1997* (NSW), ss. 42, 43, Schedule 1, cl 39. For more information see OEH's guidelines at: <http://www.environment.nsw.gov.au/waste/envguidlins/index.htm>.
4. The EPA is empowered to issue pollution licences, called "environment protection licences" to authorise the carrying out of certain activities; see: *Protection of the Environment Operations Act 1997* (NSW), Schedule 1 and s. 43; also see the OEH guide to licensing at: <http://www.environment.nsw.gov.au/licensing/licenceguide.htm>
5. *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 12 and Schedule 8, Parts 1-3. These parts specify what types of rubbish can be burnt in particular local government areas.
6. *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 10.
7. *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 11.
8. *Protection of the Environment Operations Act 1997* (NSW), s. 145.
9. *Protection of the Environment Operations Act 1997* (NSW), s. 143.
10. *Protection of the Environment Operations Act 1997* (NSW), s. 145.
11. *Protection of the Environment Operations Act 1997* (NSW), s. 145A.
12. *Protection of the Environment Operations Act 1997* (NSW), ss. 115, 119.
13. *Environment Protection Authority v Watke, Environment Protection Authority v Geerdink* [2010] NSWLEC 24
14. *Protection of the Environment Operations Act 1997* (NSW), s. 120.
15. See: <http://www.cma.nsw.gov.au>
16. *Protection of the Environment Operations Act 1997* (NSW), s. 120, Dictionary.
17. *Protection of the Environment Operations Act 1997* (NSW), Dictionary. See also *Environmental Protection Authority v Straits (Hillgrove) Gold Pty Ltd* [2010] NSWLEC 114.
18. See: <http://www.environment.nsw.gov.au/epa>
19. *Protection of the Environment Operations Act 1997* (NSW), s. 120.
20. *Protection of the Environment Operations Act 1997* (NSW), s. 123.
21. *Protection of the Environment Operations Act 1997* (NSW), s. 123.
22. *Protection of the Environment Operations Act 1997* (NSW), s. 129.
23. *Protection of the Environment Operations Act 1997* (NSW), Dictionary.
24. All Scheduled activities are listed in Schedule 1 to the *Protection of the Environment Operations Act 1997* (NSW). See textbox at Chapter 7.3.
25. They are listed in Schedule 1 of the *Protection of the Environment Operations Act 1997* (NSW).
26. See: <http://www.environment.nsw.gov.au/epa>
27. *Protection of the Environment Operations Act 1997* (NSW), s. 133.
28. *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 10.
29. *Protection of the Environment Operations Act 1997* (NSW), ss. 48 and 49.
30. *Protection of the Environment Operations Act 1997* (NSW), s. 128; *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), Schedules 2, 3, 4, 5.

31. See: <http://www.environment.nsw.gov.au/epa>
32. *Protection of the Environment Operations Act 1997* (NSW), ss. 276, 187, 275.
33. *Protection of the Environment Operations Act 1997* (NSW), ss. 264, 6.
34. *Protection of the Environment Operations Act 1997* (NSW), Dictionary.
35. *Protection of the Environment Operations Act 1997* (NSW), s. 139.
36. *Protection of the Environment Operations Act 1997* (NSW), ss. 42, 48, 49.
37. *Contaminated Land Management Act 1997* (NSW), s. 5.
38. *Contaminated Land Management Act 1997* (NSW), s. 5(4).
39. *Contaminated Land Management Act 1997* (NSW), ss. 11, 12.
40. *Contaminated Land Management Act 1997* (NSW), ss. 11(2), 11(4).
41. *Contaminated Land Management Act 1997* (NSW), s. 58. The register is publicly accessible and is available here: <http://www.environment.nsw.gov.au/prclmapp/searchregister.aspx>
42. *Contaminated Land Management Act 1997* (NSW), s. 10(3).
43. *Contaminated Land Management Act 1997* (NSW), s. 8.
44. *Contaminated Land Management Act 1997* (NSW), s. 60.
45. *Contaminated Land Management Act 1997* (NSW), s. 60.
46. *Contaminated Land Management Act 1997* (NSW), s. 60.
47. *Contaminated Land Management Act 1997* (NSW), s. 4.
48. *Contaminated Land Management Act 1997* (NSW), ss. 14, 15.
49. *Contaminated Land Management Act 1997* (NSW), s. 14(1)(b).
50. *Contaminated Land Management Act 1997* (NSW), s. 16.
51. *Contaminated Land Management Act 1997* (NSW), s. 28.
52. *Contaminated Land Management Act 1997* (NSW), ss. 14(6), 28(4).
53. *State Environmental Planning Policy 55 – Remediation of Land* (NSW); *State Environmental Planning Policy (State and Regional Development) 2011* (NSW), Sch.1, cl. 24.



8.0 Pesticides

For more information on pesticides see the EDO publication '[Getting the Drift](#)'.¹

What pesticides can I use?

You may only use pesticides that are registered in NSW or for which a permit has been issued by the Australian Pesticides and Veterinary Medicines Authority (APVMA).²

Certain pesticides, such as 1080 poison baits, are [restricted](#) and can only be used under certain conditions³ and by people who have obtained a certificate of competency from the Environment Protection Authority (EPA).⁴

You also need to be qualified under a training course such as Farmcare, ChemCert or SMARTtrain if you are using pesticides for work.⁵

For information on pesticide training, contact the [EPA](#).⁶

Do I need permission to spray my property with pesticides?

Generally you don't, although there are some exceptions. You need to have a permit to use unregistered pesticides⁷ and a certificate of competency to use or possess restricted pesticides.⁸ You can check whether a pesticide is registered or subject to a permit in the APVMA database.⁹

There are different types of permits for unregistered pesticides, such as minor use permits which are usually required for use of a pesticide on low acreage crops, small portions of high acreage crops or for animal species that are not listed on the pesticide's label. You may also need to apply for an emergency use permit, in order to deal with an outbreak of exotic disease or pest.

For more information on the different types of permits available, see the APVMA's [website](#).¹⁰

You must only use pesticides according to the directions on the label unless the APVMA permits otherwise.¹¹

Generally, every pesticide has instructions on its label regarding its use near water. You also need to be aware that placing matter, such as a pesticide, in or near a water course may amount to a water pollution offence.

For more information on water pollution offences, see Chapter 7.2 - Water Pollution.

There are also a number of [Pesticide Control Orders](#) (PCOs) in force relating to restricted pesticides.¹² These orders can either prohibit or control the use of particular pesticides, or authorise their use or possession. You must comply with any PCO that is in force.

You also need to ensure that there is no spray drift or run-off from the pesticide onto adjoining properties as your neighbours may be able to take legal action against you.¹³ You may also commit an offence if this results in harm or damage.

For more information on possible legal action, see Chapter 14.0 – Taking Action: Breaches of Environmental Law.

The APVMA, Cotton Australia, the EPA and the NSW Farmers' Association have compiled a [Fact Sheet](#) on Spray Drift.¹⁴

Do I need permission for aerial spraying?

A licence is required by the pilot and for the aircraft when aerial spraying is to be done.¹⁵ You are not allowed to spray pesticides within 150 metres of houses, schools, factories or public places without the consent of the owner or occupier.¹⁶

How do I get a permit?

For information on permits, contact the APVMA.

Who needs to be told that pesticides are being used?

There is no general obligation on landholders to tell their neighbours that they are going to use pesticides,¹⁷ although it is advisable to do so as a matter of courtesy. However, some PCOs require you to notify your neighbours and to put up appropriate signage (for example the 1080 baiting PCO). Pest management technicians (people qualified to use pesticides) are required to give prior notification to neighbours if the pesticide is being used within 20 metres of a common boundary with a sensitive place.¹⁸

Public authorities (e.g. local councils) must not use or allow the use of pesticides on land under their control unless they have prepared a pesticide use notification plan. The public authority must give the public notice of the proposed use of pesticides in accordance with that plan.¹⁹

What do I need to do when using pesticides?

Every time you use pesticides you must read the label (or ensure that you explain the label to the person who will be using the pesticide) and use the pesticide in accordance with the directions.²⁰ You must also ensure that the container in which you keep registered pesticides has an approved label attached, even if the pesticide has been mixed with another substance.²¹

You can commit an offence by using a pesticide in a manner that:

- injures or is likely to injure a person, or damages or is likely to damage property; or
- harms any (non-target) animal or plant.

There are fines of up to \$60,000 for individuals and \$120,000 for companies for misusing pesticides in this way, or using unregistered pesticides without a permit.²² Higher penalties apply where pesticides are misused wilfully or negligently, and there is an extra offence of wilfully or negligently using the pesticide in a way that materially harms threatened species.²³

Records

If you are using pesticides as part of your work, you must keep detailed records each time you

use pesticides, unless it is a hand-held spraying application for horticultural purposes. Your records must include the following:²⁵

- full name of the pesticide;
- crop sprayed;
- rate and quantity of the pesticide used;
- equipment used;
- address of the property where it was used and the landholder's name;
- date and start/finish times when it was applied;
- name and address of who applied it; and
- wind speed and direction and other relevant weather conditions.

You need to keep these records for at least three years.²⁶

The maximum penalties for failing to abide by these requirements are up to \$22,000 for individuals and \$44,000 for companies.²⁷ For aerial spraying, the penalties are up to \$60,000 for individuals and \$120,000 for companies.²⁸

For more information about your responsibilities regarding pesticide use, contact the EPA.

How should I dispose of old or unwanted pesticides?

To avoid breaching pollution laws you need to safely and legally dispose of pesticides and their containers. Two key programs that operate in NSW that enable this are the drumMUSTER and ChemClear programs.

[drumMUSTER](#)²⁹ is the national program for the collecting and recycling of empty, cleaned and non-returnable pesticide and animal health containers. In order for containers to be accepted by drumMUSTER they need to be flushed, pressure rinsed or triple rinsed.

[ChemClear](#)³⁰ is the national program for the collection and recycling of other registered (under the AgVet scheme) chemicals. ChemClear will collect chemicals for free if they are a participating manufacturer's product, are in their original container, have a readable product label, have not been mixed with another chemical and are within 2 years of their expiry or deregistration date. If your chemicals do not meet these criteria, they can still be collected by ChemClear, but this will incur a fee.

You need to register your chemicals for collection with ChemClear either [online](#) or by phone on 1800 008 182. ChemClear will then advise you of the date and location of the collection point.

What can I do if I see pesticides being misused?

To make a confidential report regarding the misuse of a pesticide, contact the [EPA](#).³¹ The EPA has a wide range of enforcement powers and can require landholders to take specified action to deal with pesticide misuse.³²

Report the incident as soon as possible, noting as many details as possible. Photographs, video recordings and notes about the incident may be helpful. Details about the time of the incident and weather conditions are important. You may also need to get water and/or soil

samples tested as soon as possible at an accredited laboratory.

If the misuse of the pesticide damages your property (for example, crops or stock) or affects your health, you may be able to seek compensation from the person responsible for the contamination.

Pesticide contamination may also affect the certification status of organic farms, causing economic loss to the affected owner. Where this occurs, an organic farmer may have grounds for an action against the pesticide user in tort. If the action is successful, the pesticide user may be liable to pay the organic farmer damages.

For more information on legal action, see Chapter 14.0 – Taking Legal Action: Breaches of Environmental Law. --

What restrictions may apply to stock affected by pesticides?

Withholding periods and other restrictions may apply for stock affected by chemical residues.

*For more information, contact the [Department of Primary Industries](#).*³³

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1. Available at: <http://www.edo.org.au/edonsw/site/publications.php#drift>
 2. *Pesticides Act 1999* (NSW), ss. 12-13. The body was previously known as the National Registration Authority. For further information about APVMA and to search for registered pesticides, view the APVMA website at: <http://www.apvma.gov.au/>.
 3. *Pesticides Act 1999* (NSW), s. 39. See also s. 4 of the (NSW) *Pesticides Act 1999* (definitions) and *Agricultural and Veterinary Chemicals Code* s. 93, which is in the Schedule to the (CTH) *Agricultural and Veterinary Chemicals Code Act 1994*.
 4. *Pesticides Act 1999* (NSW), ss. 56-58. Restricted pesticides are listed in Schedule 4 of the *Agricultural and Veterinary Chemicals Code Regulations 1995*. See: <http://www.environment.nsw.gov.au/pesticides/pco.htm>.
 5. *Pesticides Regulation 2009* (NSW), cl. 9-10.
 6. See: <http://www.environment.nsw.gov.au/epa>
 7. *Pesticides Act 1999* (NSW), s. 12.
 8. *Pesticides Act 1999* (NSW), s. 56.
 9. See: <http://services.apvma.gov.au/PubcrisWebClient/welcome.do>.
 10. See: <http://www.apvma.gov.au/permits/agricultural/index.php>
 11. *Pesticides Act 1999* (NSW), ss. 14-15.
 12. *Pesticides Act 1999* (NSW), s. 38. For copies of PCOs in force, refer to the EPA's website at: www.environment.nsw.gov.au/pesticides/pco.htm
 13. If you cause spray drift or run-off onto neighbouring land you may be liable for a common law tort, such as nuisance.
 14. The fact sheet can be downloaded here: <http://www.environment.nsw.gov.au/pesticides/pesticides.htm>
 15. *Pesticides Act 1999* (NSW), s. 45.
 16. This restriction is imposed under a pesticides control order. This particular PCO is known as "Air 1".

17. Part 5 of the *Pesticides Regulation 2009* (NSW) sets out circumstances in which notification is required. This includes notification by public authorities and notification of use on common areas in residential complexes.
18. *Pesticides Regulation 2009* (NSW), cl. 27. 'Sensitive places' include: schools, preschools, kindergartens, childcare centres, hospitals, community centres or nursing homes.
19. *Pesticides Regulation 2009* (NSW), cl. 19.
20. *Pesticides Act 1999* (NSW), ss. 14-15.
21. *Pesticides Act 1999* (NSW), s. 16.
22. *Pesticides Act 1999* (NSW), ss. 10-11, 13, 15.
23. *Pesticides Act 1999* (NSW), ss. 7-9.
24. *Pesticides Act 1999* (NSW), s. 54(1); *Pesticides Regulation 2009* (NSW), cl. 13(1)(g).
25. *Pesticides Regulation 2009* (NSW), cl. 14. See *Pesticides Act 1999* (NSW), s. 54(2); and *Pesticides Regulation 2009*, cl. 7 for the record requirements if you are engaging in aerial spraying.
26. *Pesticides Act 1999* (NSW), s. 54(3); and (NSW) *Pesticides Regulation 2009*, cl. 15.
27. *Pesticides Regulation 2009* (NSW), cl. 13 and cl. 15.
28. *Pesticides Act 1999* (NSW), s. 54(1).
29. See: <http://www.drummuster.com.au/category.php?id=15>
30. See: www.chemclear.com.au
31. See: <http://www.environment.nsw.gov.au/pollution/chemicalradiation.htm>
32. *Pesticides Act 1999* (NSW), Pt 3.
33. See: <http://www.dpi.nsw.gov.au/agriculture>



9.0 Crops and Stock

9.1 PLANTING CROPS

Do I need permission to plant crops on my land?

In most rural areas, there is no need to obtain permission to plant crops on land that is already cleared. However, this will depend on the local environmental plan (LEP) for your local council area and how your land is zoned. You should check with your local council to see whether development consent is required for cropping.

If you plan to irrigate your crops, you may need to apply for a water access licence.

For more information on water access licences and irrigation, see Chapter 5.0 – Water Management.

Can I clear my land to plant crops?

In most areas you will need permission to clear land for the purposes of planting crops.

For more information, see Chapter 2.0 – Vegetation Management.

9.2 LIVESTOCK

Do I need permission to bring animals onto my property?

This depends on the nature of the animals, and why you are bringing them onto the property. Bringing livestock onto your property may require development consent from the council under the LEP in your local council area.

Development consent is not usually required to run stock on properties zoned 'rural'. However, development consent, including an environmental impact assessment will usually be needed if you plan an intensive stock development such as a piggery, poultry farm or cattle feed lot.¹ Under the [standard local environmental plan](#) which is being gradually introduced throughout NSW, grazing of livestock will be possible without consent on land zoned RU1 Primary Production and RU2 Rural landscape.²

You may also require other approvals, such as a pollution licence from the [Environment Protection Authority](#).³

If you are planning to bring a significant number of animals onto your property, particularly for intensive stock developments, check with your local council or the Department of Planning and Infrastructure to see if you need development consent.

For information about avoiding overstocking and introducing exotic animals, contact your local Livestock Health and Pest Authority (LHPA) or the Department of Primary Industries - Agriculture.

How am I required to identify stock?

Landholders have a responsibility to identify cattle, pigs, goats and sheep.⁴ Examples of

identification methods include branding, earmarks and ear tags.

If you intend to allow cattle, pigs, sheep, goats, bison, buffalo, deer, camels, horses, donkeys, or a certain quantity of poultry, emus or ostriches to graze on your land, you must apply for a Property Identification Code (PIC) from your local LHPA.⁵ The PIC is part of the National Livestock Identification System and is a unique eight number code assigned to identify your stock.⁶

PICs are used by LHPAs for disease tracing purposes and to monitor chemical residue issues. Graziers can also use the code to identify stock movements from one property to another and participate in industry quality assurance programs.

For more information on stock identification, the National Livestock Identification System, and conditions on selling stock, contact your local [LHPA](#).

*The PIC application form is available [here](#).*⁷

What do I do if someone else's livestock comes onto my property?

You can impound livestock that trespasses onto your land.⁸

If you can easily find out the owner's identity, you must inform them of the livestock's whereabouts within 24 hours. You can then deliver the animals to the nearest convenient public pound or hold them on your land for up to 4 days for the owner to collect them. In the meantime you must take care of the livestock, but you can claim the expenses incurred in doing so from the owner when releasing the animals to them.⁹

If you cannot easily find out the owner's identity, you must deliver the livestock to the nearest convenient public pound within 48 hours of impounding the animals.¹⁰

Do I need a permit to move stock or graze stock on public land?

If you want to use a travelling stock reserve to graze your stock, or to walk them from place to place, you will normally need a stock permit, even if it is only a small number of animals.¹¹ If you do not have a permit for your stock to be on a reserve, they can be impounded and you may be liable to compensate the LHPA for any damage caused to the land by your stock.¹²

*To obtain a permit for the movement of stock by droving, or for grazing on travelling stock reserves, contact your local [LHPA](#).*¹³

In order to transport stock by vehicle, you will also need to complete a stock statement which must be retained for at least two years after the transportation ends.¹⁴

*For information on grazing on other types of public land, contact [Land and Property Information](#).*¹⁵

What are some of the conditions on moving stock?

You can normally only move stock across a public road between sunrise and sunset.¹⁶ There are some exceptions, such as moving dairy cows across a road to another part of your property.¹⁷

You are required to maintain a rate of travel of ten kilometres per day, unless the stock is

approved to travel slower by the LHPA.¹⁸

There are a number of other conditions that apply to moving stock, such as the display of warning signs (if you are moving stock near a public road that isn't a permanent stock zone) and requirements to contain stock overnight.¹⁹

If you are in charge of the stock, you have an obligation to keep them under control at all times. If you fail to keep adequate control of the stock you may face a fine of up to \$1,100.²⁰

For more information, contact your local LHPA.

What are travelling stock reserves?

Travelling stock reserves (TSRs) are areas of Crown land which are reserved²¹ for use by stock owners for travelling or grazing their stock. TSRs may also be used for public recreation and conservation. Livestock Health and Pest Authorities are responsible for the management of TSRs. LHPAs attempt to balance the different uses of the land in order to assure its long term sustainability.

You do not need a permit from the LHPA for most recreational uses,²² however if you want your stock to use a TSR you need to apply for a permit.²³

For more information about using TSRs and applying for permits, see the LHPA's [website](#).²⁴

You can also access information about TSRs from the Department of Primary Industries – Catchments and Lands [website](#).²⁵

What happens if there is an outbreak of disease?

As a stock owner, land occupier or veterinarian, you are required to notify the local LHPA and/or an inspector of the Department of Primary Industries if you suspect that your stock or stock you are dealing with have a notifiable disease.²⁶ You must do this within 48 hours and there are serious penalties for failing to notify.

If you suspect that the disease is an emergency disease you must notify immediately, by ringing the national Emergency Animal Disease Hotline on 1800 675 888.²⁷

Notifiable diseases

A list of [notifiable diseases](#) in NSW current as of May 2012 is available on the Department of Primary Industries website.²⁸

For the most recent declarations of diseases, contact the Department of Primary Industries or visit their [website](#).²⁹

Emergency diseases

Emergency diseases are exotic diseases that do not normally occur in Australia or diseases that don't normally occur in such a severe outbreak. Most of these diseases are also notifiable diseases.

Diseases may be declared to be emergency diseases at any time by the Minister for Primary Industries or the Chief Veterinary Officer of NSW.³⁰

What powers do the Minister and inspectors have if there is a disease outbreak?

The Minister for Primary Industries can declare land to be a quarantine area if there is a disease or suspected disease present in stock.³¹ The Minister can also declare land to be a protected or protected (control) area.³²

Once land is declared as being a quarantine area, protected area or protected (control) area, the Minister can establish check points at the boundary,³³ authorise fencing and gates and close roads to prevent vehicles entering or exiting the area.³⁴

Inspectors³⁵ have the power to stop, enter and search vehicles in or near a quarantine area, protected area or protected (control) area.³⁶ They also have powers to enter your land or buildings at any time to inspect or treat stock, detain infected stock or material, test stock for disease or detain travelling stock.³⁷

The Minister or an inspector can order a person to destroy stock or other infected material in a quarantine area, protected area or protected (control) area.³⁸

There are serious penalties for failing to comply with quarantine orders or committing related offences such as obstructing an inspector from investigating an outbreak or providing them with false information.³⁹

What can I do if I see stock being mistreated or neglected?

Landholders have a legal responsibility to feed and care for any animals that are impounded on their land.⁴⁰

If you observe animals being mistreated or neglected, you can make a confidential report to the RSPCA on 02 9770 7555 or 1300 CRUELTY (1300 278 3589).

Do I need permission to stock my dam or stream with fish?

To release live fish into water on your property, you need either a fisheries permit or an aquaculture permit.⁴¹ This is because some types of fish, like carp, may be unsuitable for release, even into an enclosed dam.

*For more information, contact the [Department of Primary Industries - Fisheries](#).*⁴²

9.3 PESTS AND WEEDS

Pest animals and insects

The Minister for Primary Industries can make pest control orders.⁴³ These orders may require people occupying land to eradicate by any lawful method declared pest animals or pest insects on their land generally or during a particular stage of their life cycle. They may also require landholders to notify the Livestock Health and Pest Authority (LHPA) about the presence of a pest on the land.⁴⁴

Contact your local council or [LHPA](#) for a list of declared pest animals and insects and any pest control orders that may apply to your land.

The local LHPA may also order landholders to undertake control work to eradicate pests. There are substantial penalties for non-compliance,⁴⁵ and authorised officers can undertake

the control work at your expense if you fail to do so.⁴⁶

*For more information about controlling pests, contact your local [LHPA](#).*⁴⁷

Note that there are legal restrictions on the use of pesticides. See Chapter 8.0- Pesticides.

Noxious Weeds

Landholders have a legal duty to control declared [noxious weeds](#).⁴⁸ The list of declared noxious weeds varies between local government areas, so it is wise to check with your local council's weed control officer to obtain a local [list](#).⁴⁹

Certain classes of noxious weeds are notifiable.⁵⁰ Landholders must inform the local control authority (usually the local council or the Western Lands Commissioner) within 3 days of becoming aware that there is a notifiable weed on their property.⁵¹

Council weed control officers may inspect your property and order you to take steps to control declared noxious weeds on your property.⁵² This may include issuing you with a weed control notice if the officer determines that you have failed to meet your obligation to control the weed.⁵³ Penalties apply for non-compliance.⁵⁴

Note that ornamental plants, including aquarium plants, may become serious weeds.

*For more information about the introduction of potential weed species to your property, contact your local council weed control officer or the Department of Primary Industries – Agriculture [website](#).*⁵⁵

Note that there are legal restrictions on the use of herbicides. See Chapter 8.0 – Pesticides.

9.4 GENETICALLY MODIFIED ORGANISMS

What is a genetically modified organism?

The term 'genetically modified organism' (GMO) includes any organism that has been modified by gene technology, or that has inherited genetically modified traits from another organism.⁵⁶

Gene technology involves the modification of the genetic material of organisms to introduce or alter a specific characteristic.

In agriculture, gene technology may be used to incorporate characteristics that increase resistance to pests and diseases or improve tolerance to herbicides.

Can I grow genetically modified crops on my land?

Growing genetically modified (GM) crops in Australia is prohibited unless it has been authorised by the Federal [Office of the Gene Technology Regulator](#) (OGTR).⁵⁷

Contact the OGTR to find out whether or not you need to apply for a licence.

If you require a licence to grow GM crops, you must apply to the OGTR, which will assess any risks to the environment or human health in deciding whether or not to issue a licence. The OGTR will also consider what conditions should apply, and the appropriate level of monitoring.⁵⁸

Certain types of dealings⁵⁹ do not require a licence to be issued by the OGTR. These types of dealings are listed on the [GMO Record](#), which is available on OGTR website.⁶⁰

All licences contain a condition that the licence holder must allow entry to the premises for the purposes of monitoring and auditing.⁶¹

As a grower, what should I consider regarding GM crops?

At present canola is the only GM crop allowed to be grown legally in NSW. The current framework for the segregation of GM and non-GM canola is that the industry is self-regulated.⁶² This means that the bulk handling companies (companies that growers send their grains or seeds to for storage before being supplied to buyers) each have their own protocols regarding the testing of, and separate storage facilities for, GM and non-GM produce.

Canola growers should consider their potential liability if their produce is found to have been contaminated or has contaminated another grower's produce. All growers should also consider their ability to meet the requirements of international markets.

Always seek independent legal advice which considers your specific situation prior to entering any contractual arrangements or making a declaration about your produce.

What does the continuation of the moratorium in NSW mean?

Once a GM crop has been licenced at the federal level, in order to be able to grow it you must still meet the requirements of the NSW GM legislation.

GM canola has been grown commercially in NSW since 2008.⁶³ However, in 2003, the NSW Government placed a three year moratorium on the commercial release of certain GM food crops.⁶⁴ This prevented certain GM crops grown primarily for human consumption (such as canola) from being grown in NSW. In December 2007, the NSW Government extended a blanket moratorium until 1 July 2011.⁶⁵ The moratorium was in turn extended until July 2021.⁶⁶ This means that under current NSW law, GM food crops cannot be grown unless an application is made for a specific crop to be approved by the Minister for Primary Industries.

To find out more about which crops are subject to a moratorium in New South Wales, contact the Department of Primary Industries.

What happens if my crops are affected by a GMO?

It is an offence to intentionally release a GMO into the environment without government authorisation.⁶⁷ If your crops are contaminated by GMOs (for example, from another property), you do not have a special right to compensation.⁶⁸

However, if you have suffered damage or loss as a result of GMO contamination, you may be entitled to seek damages from the person responsible. At the time of writing there have not yet been any cases on this issue in Australia.

For more information on taking legal action, see Chapter 14.0 – Taking Action: Breaches of Environmental Law.

9.5 ORGANIC PRODUCE

How do I get organic certification?

Before a product can be exported as either organic or biodynamic, it has to meet the national standard for organic produce, and obtain a certificate from a government approved certifying body.⁶⁹

The national standard [*AS 6000-2009*](#),⁷⁰ sets out the minimum requirements to be met by growers and manufacturers operating in the organic and biodynamic industry. This standard covers the production, preparation, transportation, labelling and marketing of organic produce. It also provides information for farmers considering conversion to organic practices.

The following are approved certifying bodies: AUQ-QUAL Limited, Australian Certified Organic, Bio-dynamic Research Institute, NASAA Certified Organic, Organic Food Chain, Safe Food Production Queensland, Tasmanian Organic-dynamic Producers.⁷¹

*For further information about organic and biodynamic production and the certification process, you should contact one of these bodies. Their contact details are available from the Department of Agriculture, Fisheries and Forestry [website](#).*⁷²

While this standard is not currently mandatory for selling produce as 'organic' in the domestic market, if you do sell uncertified produce as organic, you may be liable under trade practices legislation for misleading and deceptive conduct or making false representations.⁷³

9.6 BIOFUELS

In 2007, the NSW Government introduced minimum ethanol content for wholesale petrol sales.⁷⁴ This led to a growing market for biofuels. The mandate for ethanol content has increased from 2% to 4% in 2010 and then to 6% in 2011.⁷⁵ Biodiesel also has a content requirement which increased to 5% on 1 January 2012.⁷⁶

In order for biofuels to count towards the minimum content, they must meet a suitability standard. As the market is still becoming established, the legal framework is being refined gradually. The current suitability standard that biofuel producers must meet is the [*Global Principles and Criteria for Sustainable Biofuels Production—Version Zero*](#) (Principles).⁷⁷

In short, the Principles require that biofuel production:

- follows Australian and international law;
- contributes to Indigenous people and communities in production areas;
- promotes soil health;
- optimises and preserves water supplies;
- minimises air pollution;
- is cost effective;
- is socially and environmentally efficient throughout the production chain; and
- does not impair food security.

You should aim to comply with each of the Principles to the best of your ability. This is because early and thorough compliance will lower your costs of future compliance when the

standards are likely to be increased significantly.

1. *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 3, cl. 21; (NSW) *State Environmental Planning Policy (State and Regional Development) 2011* Sch. 1 item 1. See also EDO NSW Fact Sheet 2.3b on State Significant Development and State Significant Infrastructure: http://www.edo.org.au/edonsw/site/factsh/fs02_3_1b.php
2. Standard Instrument – Principal Local Environmental Plan, Land Use Table, Direction 2. See: <http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+155a+2006+cd+0+N>
3. See: <http://www.environment.nsw.gov.au/epa/>
4. *Stock Diseases Regulation 2009* (NSW), cl. 20. The law requires you to identify stock in certain circumstances such as where they are being bought or sold, moved or slaughtered.
5. *Stock Disease Regulation 2009* (NSW), cl. 39.
6. A PIC is made up of: the first letter 'N' for New South Wales; the second letter is a check digit for the LHPA computer system to confirm that the PIC is valid; the next two numbers identify the Livestock and Pest district; and the last four numbers identify your property.
7. See: <http://www.lhpa.org.au/identifying-and-tracing-livestock/property-identification-codes>
8. *Impounding Act 1993* (NSW), s.12.
9. *Impounding Act 1993* (NSW), s.13.
10. *Impounding Act 1993* (NSW), s.14.
11. It is an offence for stock to be on a public road, travelling stock reserve or other public land without a permit. See: (NSW) *Rural Lands Protection Act 1998*, s.139.
12. *Impounding Act 1993*, s. 9 (NSW); *Rural Lands Protection Act 1998* (NSW), ss. 139(3), 127.
13. See: <http://www.lhpa.org.au/>
14. *Rural Lands Protection Act 1998* (NSW), Part 10A.
15. See: <http://www.lpi.nsw.gov.au/>
16. *Rural Lands Protection Regulation 2010* (NSW), cl. 25.
17. *Rural Lands Protection Regulation 2010* (NSW), cl. 26(e).
18. *Rural Lands Protection Regulation 2010* (NSW), cl. 41.
19. *Rural Lands Protection Regulation 2010* (NSW), cl. 21, 25.
20. *Rural Lands Protection Regulation 2010* (NSW), cl. 31.
21. Under the *Crown Lands Act 1989* (NSW).
22. *Rural Lands Protection Regulation 2010* (NSW), cl. 29.
23. *Rural Lands Protection Act 1998* (NSW), Part 8, Div 5.
24. See: <http://www.lhpa.org.au/travelling-stock-reserves/tsr-use-of-and-permits>
25. See: http://www.lpma.nsw.gov.au/crown_land/crown_reserves/stock_reserves
26. *Stock Diseases Act 1923* (NSW), s. 9.
27. *Animal Diseases (Emergency Outbreaks) Act 1991* (NSW), s. 7. See: <http://www.dpi.nsw.gov.au/biosecurity/animal>
28. See: <http://www.dpi.nsw.gov.au/agriculture/livestock/health/general/notifiable-animal-diseases-nsw>

29. See: <http://www.dpi.nsw.gov.au/aboutus/about/legislation-acts/stock-diseases>
30. *Animals Diseases (Emergency Outbreaks) Act 1991* (NSW), s. 6A.
31. *Stock Diseases Act 1923* (NSW), s.10.
32. *Stock Diseases Act 1923* (NSW), s. 11A.
33. A check point is the only area to lawfully move stock or animal products across the boundary.
34. *Stock Diseases Act 1923* (NSW), s. 12.
35. The Director-General of NSW Trade and Investment can appoint a person to be an inspector under s. 6 of the *Stock Diseases Act 1923*. Inspectors can be a person from a Livestock Health and Pest Authority or a police officer.
36. *Stock Diseases Act 1923* (NSW), s. 12A.
37. *Stock Diseases Act 1923* (NSW), s. 7.
38. *Stock Diseases Act 1923* (NSW), s. 17.
39. *Stock Diseases Act 1923* (NSW), Pt. 5.
40. *Prevention of Cruelty to Animals Act 1979* (NSW), ss. 8-9.
41. *Fisheries Management Act 1994* (NSW), s. 216.
42. See: <http://www.dpi.nsw.gov.au/fisheries>
43. *Rural Lands Protection Act 1998* (NSW), s. 143.
44. *Rural Lands Protection Act 1998* (NSW), s. 155(3).
45. *Rural Lands Protection Act 1998* (NSW), s.167.
46. *Rural Lands Protection Act 1998* (NSW), ss.169, 171.
47. See: <http://www.lhpa.org.au/pests>
48. *Noxious Weeds Act 1993* (NSW), s. 12. It is also an offence to sell or scatter material, knowing that it includes noxious weed material: ss. 28-30. See: <http://www.dpi.nsw.gov.au/agriculture/pests-weeds/weeds/definition#Noxious-Weeds>
49. See: <http://www.dpi.nsw.gov.au/agriculture/pests-weeds/weeds/noxweed>
50. These include weeds classed as 'State Prohibited Weeds', 'Regionally Prohibited Weeds' and 'Restricted Plants'. See *Noxious Weeds Act 1993* (NSW), s. 8 (1).
51. *Noxious Weeds Act 1993* (NSW), s. 15.
52. *Noxious Weeds Act 1993* (NSW), ss. 18, 43.
53. *Noxious Weeds Act 1993* (NSW), s. 18(4).
54. *Noxious Weeds Act 1993* (NSW), s. 19.
55. See: <http://www.dpi.nsw.gov.au/agriculture/pests-weeds/weeds>
56. *Gene Technology Act 2000* (Cth), s. 10. Note that some organisms not covered by the Act are listed in the (CTH) *Gene Technology Regulations 2001*, Sch. 1. Under the (NSW) *Gene Technology Act 2003*, s. 4(2), terms defined by the Commonwealth Act have the same meaning in the NSW Act.
57. See: <http://www.ogtr.gov.au>
58. *Gene Technology Act 2000* (Cth), ss. 55-56.
59. The term 'dealing' includes: conducting experiments with the GMO; making, developing, producing or manufacturing the GMO; breeding the GMO; propagating the GMO; using the GMO in the course of

manufacture of a thing that is not the GMO; growing, raising or culturing the GMO; importing the GMO; transporting the GMO; and disposing of the GMO.

60. *Gene Technology Act 2000* (Cth), Part 6, Division 3. See: <http://www.ogtr.gov.au/internet/ogtr/publishing.nsf/Content/gmorec-index-1>
61. *Gene Technology Act 2000* (Cth), s. 64.
62. Dr J Viljoen et al. (2004) 'Segregating GM and non-GM Grain in the Australian Grain Storage System,' Department of Agriculture, Fisheries and Forestry. Available at: http://www.daff.gov.au/data/assets/pdf_file/0003/182829/Final_GM_Report_July_04.pdf
63. This was as a result of an application by a representative of the canola industry to the Minister for Primary Industries for GM. See the Section 7A Order made under the *Gene Technology (GM Crop Moratorium) Act 2003* (NSW), dated 12 March 2008, published in the NSW Government Gazette, No. 33, 14/03/08.NSW DPI website, 'GM Canola': <http://www.dpi.nsw.gov.au/agriculture/broadacre/winter-crops/oilseeds/canola/gm>
64. (NSW) *Gene Technology (GM Crop Moratorium) Act 2003*, Part 2, Division 1.
65. NSW DPI website: 'GM canola'. Available at: <http://www.dpi.nsw.gov.au/agriculture/broadacre/winter-crops/oilseeds/canola/gm> (*Gene Technology (GM Crop Moratorium) Act 2003* (NSW), s. 7A.
66. *Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011* (NSW).
67. *Gene Technology Act 2000* (Cth), s. 32.
68. Lee McIntosh, "Liability for Environmental Damage Caused by the Release of Genetically Modified Organisms," *For Who's Benefit? Evaluating Genetically Modified Organisms in Western Australia from a Different Perspective*, Conference held by Conservation Council WA, 10 October 2002.
69. Department of Agriculture, Fisheries and Forestry, Australia Quarantine and Inspection Service website 'Exporting Organic or Biodynamic Produce'. Available at: <http://www.daff.gov.au/aqis/export/organic-biodynamic/exporting>
70. Available for purchase from SAI Global's website <http://infostore.saiglobal.com/store2/results2.aspx?keyword=6000-2009&Db=AS&searchType=simple&Status=all&publisher=AS&Max=15&Search=Proceed>
71. *Export Control (Organic Produce Certification) Orders* (Cth).
72. See: <http://www.daff.gov.au/aqis/about/contact/aco>
73. For example, see *Australian Competition & Consumer Commission v G.O. Drew Pty Ltd* [2007] FCA 1246.
74. This was provided for by the *Biofuels (Ethanol Content) Act 2007* (NSW), which came into effect on 1 October 2007. The Act has since been amended in 2009 and it is now called the (NSW) *Biofuels Act 2007*.
75. *Biofuels Act 2007* (NSW), s. 6.
76. (*Biofuels Act 2007* NSW), s. 7.
77. Prescribed by the *Biofuels Regulation 2007* (NSW), cl. 3A. The standard is available here: http://www.biofuels.nsw.gov.au/data/assets/pdf_file/0003/105429/RSB_Principles_and_Criteria_v0.pdf

10.0 Mining and Quarrying

For more information about mining and coal seam gas read our publication [*Mining Law in New South Wales: A guide for the community*](#).¹

Who owns the minerals and petroleum on or under my land?

As a general rule, the Crown (the Government) owns the minerals and petroleum on or under your land (except in the case of a limited number of old Crown grants). Minerals include coal, gold, antimony and bauxite.² Petroleum is any naturally occurring hydrocarbon, whether in gaseous, liquid or solid state.³ This includes coal seam gas (CSG).

Because almost all minerals and petroleum are owned by the Government, and not by the landowner, the Government has the power to authorise others to look for and remove them from your land.

How does a company gain access to minerals and petroleum on my land?

Mining and CSG companies require permission (in the form of a title) to access minerals and petroleum on your land. The Minister for Resources and Energy is usually responsible for granting these titles, which include:

- An **exploration licence**, which allows the licence holder to search for certain groups of minerals or petroleum on areas of private or Crown land. For minerals, an exploration licence can be issued for up to five years⁴ and for petroleum, an exploration licence can be issued for up to six years.⁵ Both may be renewed for further periods.⁶
- An **assessment lease**, which is designed to allow the retention of rights over an area in which a significant mineral or petroleum deposit has been identified, if mining the deposit is not commercially viable in the short term but there is a reasonable prospect that it will be in the longer term. Assessment leases can be granted for up to 5 years for minerals and up to 6 years for CSG.⁷
- A **mining lease**, which gives the leaseholder the right to prospect and mine on a specified area of land for a specific mineral or group of minerals. A mining lease also allows the leaseholder to engage in mining related activities such as road building, construction and site rehabilitation.⁸ Mining leases can be granted for up to 21 years.⁹
- A **petroleum production lease**, which allows the holder to conduct petroleum mining operations (including CSG) on the land together with the right to construct associated infrastructure.¹⁰ A petroleum production lease can be granted for up to 21 years.¹¹

In addition to these titles, some exploration and mining activities will also require development consent from either the Minister for Planning and Infrastructure or the local council, depending on how the development is characterised. Most mining and petroleum production activities will be characterised as State significant development and go through the applicable assessment process.¹²

See Chapter 6.0 – Construction and Development for more information on State significant development and other forms of development assessment.

How can I find out about proposed exploration and mining activities?

For mineral exploration licences, affected landholders do not need to be personally notified but the applicant must publish a notice of their application in a State-wide and local newspaper within 45 days of receiving confirmation that the application has been lodged.¹³ A list of coal exploration licence applications is published on the NSW Trade and Investment – Division of Resources and Energy [website](#).¹⁴

For petroleum exploration licences, affected landholders do not need to be personally notified and there is no legal requirement for applications to be publicly notified at all. A list of petroleum exploration licence applications is published on the NSW Trade and Investment – Division of Resources and Energy [website](#).¹⁵

Owners of land that will be affected by a proposed mining lease that would extend to the *surface* of their land must be notified of the application.¹⁶ The applicant must also publish a notice in a local and State-wide newspaper within 14 days of lodging an application.¹⁷

Owners of land subject to a petroleum production lease application are not generally required to be individually notified.¹⁸ However, the applicant must notify the public generally within 21 days of lodging an application by publishing a notice in a newspaper circulating generally in the State.¹⁹

How are mining and petroleum applications assessed and approved?

A title must be granted by the Minister for Resources and Energy before mining or petroleum activities can commence.²⁰

Exploration

Once the Minister has received an application, it will be assessed by the Department of Trade and Investment – Division of Resources and Energy. Public comment is generally not sought, unless the application relates to coal or CSG in which case members of the public can comment on the proposed exploration licence [online](#).²¹

A decision will then be made as to whether to grant or refuse the licence. The Minister must not make a decision before taking into account the need to conserve and protect the environment, including flora, fauna, scenic attractions and features of Aboriginal and historical interest.²²

Licences can be granted subject to legally binding conditions.²³

The applicant will then need to lodge a review of environmental factors (REF) which is a preliminary study that provides a basic overview of the potential environmental impacts of the proposed exploration work. The REF will need to be approved by the Department of Trade and Investment – Division of Resources and Energy before exploration work can commence.

Mining and production

Applications for mining leases and petroleum production leases are assessed in a similar way to exploration licences. The application is lodged with the Department of Trade and Investment – Division of Resources and Energy which will assess the application.

For coal lease applications, members of the public have the right to object to the granting of the lease, whether or not their land is affected.²⁴ An objection must be in writing and must be lodged with the Director-General of Trade and Investment within the time specified in the notice notifying them that the application has been lodged (see above for more information on notifications).²⁵

Landholders who own agricultural land have special rights to object to the granting of a mining lease over the surface of their land. See below for more information.

Additional opportunities to comment exist at the development consent stage.

For petroleum production lease applications, members of the public, including affected landholders, are not provided with the opportunity to comment on whether the production lease should be granted. But landholders do have certain rights to object if their land is cultivated. See below for more information.

There will be an opportunity to comment exist at the development consent stage.

For more information on assessment procedures under planning law, see Chapter 6.0- Construction and Development.

The environmental assessment for mining and production leases tends to be deferred to the development consent stage. As most mines and petroleum developments will be State significant development or designated development, an environmental impact statement will usually be required.

The Minister for Resources and Energy must not make a decision before taking into account the need to conserve and protect the environment, including flora, fauna, scenic attractions and features of Aboriginal and historical interest.²⁶

The Minister can refuse or grant the mining/production lease. However, for petroleum, if the applicant held the land under an exploration licence, they are legally entitled to be granted the production lease in respect of the land if they complied with the terms and conditions of the exploration licence and accept the conditions of the proposed production lease.²⁷

If the lease is granted, it can be subject to conditions. These conditions are in addition to any conditions attached to the development consent.²⁸

Conditions can relate to any number of things and are typically designed to minimise or avoid the impacts of the activity.

How can I understand and evaluate the environmental assessment?

Some kind of environmental assessment will accompany the application for a mining or petroleum title, either when the title is being applied for, or at the development consent stage under the planning system.

The scientific terminology in an environmental assessment document is often difficult to understand. These documents are often also lengthy and it can be hard to decide what information is significant and how accurate the predictions are likely to be. Some key areas that should be addressed in any environmental assessment of a mining or petroleum project are the impacts of the proposed project on water quality and quantity, dust and noise levels.

*The EDO has a series of [scientific fact sheets](#) which cover topics relevant to mining and quarrying, such as water quality and dust monitoring.*²⁹

What rights do landholders have to object to the grant of a title?

With regards to **mining leases**, upon being notified that an application for a mining lease has been lodged or of an intention to invite tenders for a lease, an affected landholder can write to the Director-General of Trade and Investment and object to the inviting of tenders or the granting of the lease over their land on the grounds that the land, or part of it, is *agricultural land*.³⁰

The objection must be in writing and must be lodged within 28 days of receiving the notice.³¹ It should clearly state that you object to the granting of the mining lease on the grounds that your land, or part of it, is agricultural land. You should be clear about which part of your land is agricultural land and also outline the reasons you believe the land is agricultural land.

Agricultural land is legally defined as:³²

- land that has been sown with not less than 2 crops of an annual species during the 10 years prior to the application for the mining lease being lodged; or
- land that has been sown with 1 crop of an annual species during the 10 years prior to the application for the mining lease being lodged;³³ or
- land on which shade, shelter or windbreak trees are growing, or at any time during the past 10 years, edible fruit or nut trees, vines or any other perennial crop approved by the Director-General has been growing; or
- pastures that are sown with seed of a species and at a rate of application, or treated with fertiliser of a composition and at a rate of application, satisfactory to the Director-General, and that have, as a result of that sowing or treatment, maintained a level of pasture production that is substantially above that which might be expected of natural pastures; or
- land that is used, to an extent acceptable to the Director-General, for the production of grass seed, pasture legume seed, hay or silage; or
- land that has a preponderance of improved species of pasture grasses.

If the Director-General finds that the land is agricultural land, a mining lease *cannot* be granted and an invitation for tenders cannot be made without the written consent of the landholder.³⁴ If the landholder gives consent, the consent cannot be revoked.³⁵

With regards to **petroleum production leases**, the holder of a petroleum production lease cannot carry out any production operations on the *surface* of any land which is under cultivation except with the consent of the landholder. However, the Minister for Resources and Energy can overrule this restriction if the Minister thinks the circumstances warrant it.³⁶

There is no legal definition for what constitutes cultivated land; however, cultivation for the growth and spread of pasture grasses is not to be taken to be cultivation unless the Minister thinks the circumstances warrant it.³⁷ If there is a dispute about whether particular land is cultivated, the Minister for Resources and Energy has the final say.

There is no formal right to object to the granting of a production lease, so there is no real opportunity to object on the grounds that the land is cultivated land. However, this does not mean you cannot write to the Minister for Resources and Energy upon becoming aware of an application for a petroleum production lease over your land, and strongly argue for your cultivated land to be afforded this protection.

Can I prevent the approval of a mine or petroleum development?

The consent of the landowner is not required for a mining or petroleum title to be issued or for development consent to be granted.

There are some restrictions on where mining and petroleum activities can occur. These restrictions are designed to protect the assets of the landholder.

Mining and petroleum activities (including exploration) cannot occur on the *surface* of land:³⁸

- within 200 metres of a dwelling house that is the principal place of residence of the person occupying it;
- within 50 metres of a garden for coal;
- within 50 metres of a garden, vineyard or orchard for petroleum; or
- over any significant improvements

without the written consent of the owner and, in the case of the dwelling house, the occupant.

‘Significant improvements’ include: any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure.³⁹

If there is a dispute over whether your land has a dwelling house, garden or other improvement on it, you can apply to the Land and Environment Court to determine the matter.⁴⁰

Affected landholders have the same rights as any person to make submissions about proposed development, including a proposed mining lease or petroleum production. The decision-maker must take those submissions into consideration when making its decision.⁴¹

See Chapter 6.0 Construction and Development for more information on opportunities to make submissions on proposed developments.

What are access arrangements?

Even if a mining or petroleum company has an exploration licence over your property, they cannot enter your land or take any action under the licence without first negotiating an access arrangement with you

Your right to negotiate an access arrangement at the exploration stage is one of the most important opportunities you will have to influence how exploration is carried out and to protect your property from any adverse impacts.

An exploration licence can be granted over your land without your consent, however, no exploration can take place on your land until an access arrangement is in place.⁴² An access arrangement sets out the terms upon which the company can access your land to explore for minerals or petroleum.

In order to obtain an access arrangement, the licence holder must serve a notice of intention to seek the access arrangement on the owner or occupier of the land.⁴³ The notice will usually be accompanied by a draft access arrangement which will form the basis of any negotiations.

If you cannot agree on the terms of the access arrangement (or choose not to negotiate at all), an arbitrator may be appointed.⁴⁴ The arbitrator will attempt to get the parties to agree. But if

this cannot be done the arbitrator can make a temporary determination regarding access, including a draft access arrangement if it is decided that access will be granted. Either party can seek a variation to the temporary determination within 14 days of being served with a copy of the arbitrator's determination.⁴⁵ This will be followed by a final determination. Either party can appeal this to the Land and Environment Court.⁴⁶

An access arrangement can provide for a number of matters, including:⁴⁷

- the periods during which access is permitted;
- the parts of land to which access is permitted;
- the means of gaining access;
- the kinds of exploration operations that can be carried out;
- the conditions to be observed by the licence holder, including the things which must be done to protect the environment; and
- any compensation to be paid to the landholder as a consequence of the exploration.

Each access arrangement will be different and can be negotiated to suit each landholder's particular circumstances.

Access arrangements are automatically terminated if the landholder with whom it was made sells the land or dies.⁴⁸

Access arrangements are useful tools for landholders because if a mining company accesses your land in contravention of its terms you can deny them access until the breach is remedied.⁴⁹

What should I look out for if I have to negotiate an access arrangement?

If you are given a draft access arrangement, make sure to read it thoroughly. Check that the proposed terms are not too vague. It is important to ensure that you have a clear access arrangement, because it will be easier to enforce.

EDO NSW's publication [*Mining and the Law: a guide for the community*](#)⁵⁰ has useful information on negotiating access arrangements and things that should be addressed. Also, the Department of Trade and Investment –Division of Resources and Energy has a template for access arrangements for mineral exploration (but not petroleum) on its [website](#).⁵¹

*Landholders should seek independent legal advice before entering into an access arrangement. A landholder can request that a condition of the access arrangement is that the licence holder pays the landholder's reasonable initial legal advice costs relating to the making of the arrangement.*⁵²

Can I get compensation for the effect of mining on my land?

When a mining or petroleum title is granted, a landholder may become entitled to compensation for any loss suffered or likely to be suffered as a result of the mining or production activities, including exploration.⁵³ The land in question does not need to be covered by the title for compensation to be payable.⁵⁴

Landholders may also be entitled to compensation where underground mining causes

subsidence which damages their land or improvements.⁵⁵ Claims for damage must be lodged by the owner with the local [Mine Subsidence Board](#) within 12 months of the damage occurring.⁵⁶

Access arrangements usually include a written agreement setting out the situations where compensation will be payable and the amount of compensation that will be payable.⁵⁷

If the arrangement does not cover a situation that arises, or no access arrangement is in place, the amount of compensation can be determined by a separate agreement or by the Land and Environment Court.⁵⁸

The maximum amount of compensation that can be paid under the mining legislation is the market value of your land and any buildings, structures or works on your land.⁵⁹ There is no equivalent maximum for compensation under the petroleum legislation.

Case study: compensation under a mining lease

In 1998, seven landholders from Douglas Park, south-west of Sydney, sought compensation from the Mining Warden's Court for damage caused to their properties by longwall mining undertaken by BHP.⁶⁰ The landholders claimed that the mining had caused:

- cracks to appear in the Cataract River with the result that rock pools had drained;
- gas to be released in a number of places, with associated foul odours; and
- rock falls and an increase in the likelihood of rock falls in the future.

In order to be entitled to compensation, each landholder had to establish the condition of their property before mining. Each landholder told the Court about the activities they used to engage in, such as bushwalking, swimming, canoeing and fishing and that since mining took place, these activities hadn't been possible due to the dangers of rock falls, polluted river water, the death of aquatic life and vegetation dieback.

The Court also heard evidence from three expert valuers about the impact of these changes on the market value of each landholder's property. The valuers all agreed that all but one of the property values had declined due to loss of amenity and environmental alterations in the general area. The Court did not consider the impact on the landholders personally in terms of loss of recreational opportunities, and general enjoyment of the river and surrounds.

The Court heard evidence that some of the impacts that the landholders complained of were due to the drought and/or a weir managed by Sydney Water. The Court therefore had to determine the extent to which the mine contributed to each of the problems the landholders complained of. The Court found that the mine contributed 80% while the drought and lack of water released from the weir contributed 20%.

The Court then went on to allocate compensation to each of the landholders. The compensation varied from nil to \$32,000, with the average being \$14, 857.

Can I force a mine to comply with legal requirements?

Mining and petroleum activities must be carried out in accordance with the conditions of the title (such as the exploration licence or mining/production lease) and any conditions of development consent.

If the conditions of a mining/petroleum lease or licence are breached, you can report the breach to Trade and Investment NSW, contact the mine and write to the Minister for Resources and Energy. If a licence or lease holder breaches their conditions, they may be prosecuted in the Local Court (for less serious breaches) or the Land and Environment Court.⁶¹

If any conditions of the mine's development consent are not being complied with, you can report the breach to the Department of Planning and Infrastructure or the local council (depending on who granted consent). If you think the breaches are causing pollution, such as water pollution, you should contact the Office of Environment and Heritage.

If the responsible authority does not take any action, you may be able to bring enforcement action in the Land and Environment Court.

For more information about taking legal action to enforce environmental and planning laws, see Chapter 14.0 - Taking Action: Breaches of Environmental Law.

What is a quarry and how are they regulated?

Quarries involve the extraction of 'non-precious' materials such as gravel or blue metal from the ground. They are considered extractive industries rather than mines. As a consequence, they are not regulated under mining legislation.

Instead, quarry developments are covered by planning laws. Quarries generally fall into the category development known as State significant development or designated development.⁶²

For more information on the process for approving State significant development and designated development, see Chapter 6.0- Construction and Development.

There are a number of significant environmental effects of quarrying, including excessive noise from blasting, dust, increased truck traffic on local roads, clearing of land and impacts on water quality.

In most instances, some form of environmental assessment will need to be prepared, assessing the likely social, economic and/or environmental impacts of the quarry. Members of the public will ordinarily have the opportunity to comment upon proposals for quarries.

Once a quarry is approved it will ordinarily be operated subject to conditions of approval or development consent and site specific environmental management plans.

If a quarry is operating in breach of the conditions of approval, you should report the breach to the local council or the Department of Planning and Infrastructure, depending on who granted development consent. If the relevant body does not take enforcement action, you may be able to take legal action in the Land and Environment Court to remedy or restrain the breach.⁶³

Case Study: Legal challenge to a quarry approval

In 2009, development consent was granted by Upper Hunter Shire Council to Stoneco Pty Ltd to construct a limestone quarry north of Sydney. Newcastle & Hunter Valley Speleological Society Inc (the Speleological Society) appealed to the NSW Land and Environment Court to challenge the consent.⁶⁴

The Speleological Society argued that the White Box endangered ecological community (White Box EEC), and the habitat of the squirrel glider, a listed vulnerable species, would be significantly affected by the project and hence a species impact statement was required. The other key issue was the potential for the quarry to damage any limestone cave systems and any present biota (animal, bacteria or plant life) within those systems. The quarry stockpile and handling areas were redesigned during the Court proceedings to reduce the area of disturbance.

Despite a lack of scientific certainty, the Court found that it was likely that there were caves and karst systems in the area to be quarried. It also concluded that it was beyond a mere possibility that biota existed within these systems, and that the threat of environmental damage to the biota from the proposed activity was scientifically likely.

The Court ultimately granted development consent to the quarry subject to stringent conditions. The quarry is required to monitor for caves, voids, fissures and other geodiversity of significance, and to sample for underground fauna species on the site and outside the site for at least one year before the first blast takes place. In recognition of the value of the biodiversity on the site and the endangered ecological communities that will be affected by the quarrying, the quarry owner is required to conserve in the long term 60 hectares of land as an offset. The quarry owner is also required to remediate and conserve the 6 hectares of land that will be damaged by the quarrying activities. An independent panel of experts will monitor the development over the life of the quarry.

1. See: <http://www.edo.org.au/edonsw/site/publications.php#mining>
2. *Mining Regulation 2010* (NSW), Sch. 1.
3. *Petroleum (Onshore) Act 1991* (NSW), s. 3.
4. *Mining Act 1992* (NSW), s. 27.
5. *Petroleum (Onshore) Act 1991* (NSW), s. 31.
6. *Mining Act 1992* (NSW), s. 113(2); *Petroleum (Onshore) Act 1991* (NSW), s. 19.
7. *Mining Act 1992* (NSW), s. 45; *Petroleum (Onshore) Act 1991* (NSW), s. 35.
8. *Mining Act 1992* (NSW), s. 73.
9. *Mining Act 1992* (NSW), s. 71.
10. *Petroleum (Onshore) Act 1991* (NSW), s. 41.
11. *Petroleum (Onshore) Act 1991* (NSW), s. 45.
12. *State Environmental Planning Policy (State and Regional Development) 2011*, Sch. 1, Parts 5 and 6.
13. *Mining Act 1992*, (NSW) s. 13A; *Mining Regulation 2010* (NSW), cl. 15(1), 21(1).
14. See: <http://www.resources.nsw.gov.au/titles/current-coal-and-petroleum-exploration-licence-applications/current-coal-exploration-licence-applications>
15. See: <http://www.resources.nsw.gov.au/titles/current-coal-and-petroleum-exploration-licence-applications/>

current-petroleum-exploration-licence-applications

16. *Mining Act 1992*(NSW), s. 177, Schedule 1, cl. 21.
17. *Mining Act 1992*(NSW), s. 51A.
18. *Petroleum (Onshore) Act 1991*(NSW), s. 43. There are requirements to notify registered native title bodies corporate, registered native title claimants, and representative Aboriginal/Torres Strait Islander bodies, where there is an application for a low impact prospecting title on land affected by these interests: *Petroleum (Onshore) Act 1991* (NSW), s. 45D.
19. *Petroleum (Onshore) Act 1991* (NSW), s. 43.
20. *Mining Act 1992* (NSW), s. 5; *Petroleum (Onshore) Act 1991* (NSW), s. 7.
21. See: <http://www.resources.nsw.gov.au/community-information/comment>
22. *Mining Act 1992* (NSW), s. 237; *Petroleum (Onshore) Act 1991* (NSW), s. 74.
23. *Mining Act 1992* (NSW), s. 26; *Petroleum (Onshore) Act 1991* (NSW), s. 23.
24. *Mining Act 1992* (NSW), s. Sch. 1, cl. 26.
25. *Mining Act 1992* (NSW), Sch. 1, cl. 26.
26. *Mining Act 1992* (NSW), s. 237; *Petroleum (Onshore) Act 1991* (NSW), s. 74.
27. *Petroleum (Onshore) Act 1991* (NSW), s. 42. Also, granting the lease must not breach the *Environmental Planning and Assessment Act 1979* (NSW) or any other Act.
28. *Mining Act 1992* (NSW), s. 70; *Petroleum (Onshore) Act 1991* (NSW), s. 23.
29. See: http://www.edo.org.au/edonsw/site/science_advices.php
30. *Mining Act 1992* (NSW), Sch. 1, cl. 22.
31. *Mining Act 1992* (NSW), Sch. 1, cl. 22.
32. *Mining Act 1992* (NSW), Sch. 2.
33. Unless the Director-General believes that more than one crop should reasonably have been sown in that time or that the land should have been brought under cultivation at an earlier date.
34. *Mining Act 1992* (NSW), Sch. 1, cl. 23.
35. *Mining Act 1992* (NSW), Sch. 1, cl. 22(4).
36. If this happens, a compensation assessment has to be made before any production activities start to ensure the landholder is compensated for any loss or damage to any crop on the land concerned. See: *Petroleum (Onshore) Act 1991* (NSW), s. 71(2A). The assessment can be made between the landholder and the gas company or, if they can't agree, by the Land and Environment Court.
37. *Petroleum (Onshore) Act 1991* (NSW), s. 71(3).
38. *Mining Act 1992* (NSW), ss. 62; *Petroleum (Onshore) Act 1991* (NSW), s. 72.
39. *Mining Act 1992* (NSW), Dictionary.
40. *Mining Act 1992* (NSW), ss. 62(6A) and 188(5);(NSW) *Petroleum (Onshore) Act 1991*, s. 72(4).
41. *Environmental Planning and Assessment Act 1979* (NSW), s. 79C.
42. *Mining Act 1992* (NSW), s. 140; *Petroleum (Onshore) Act 1991* (NSW), s. 69C
43. *Mining Act 1992* (NSW), s. 142; *Petroleum (Onshore) Act 1991* (NSW), s. 69C
44. *Mining Act 1992* (NSW), s. 144; *Petroleum (Onshore) Act 1991* (NSW), ss. 69F, 69G.
45. *Mining Act 1992* (NSW), s. 150; *Petroleum (Onshore) Act 1991* (NSW), s. 69M

46. *Mining Act 1992* (NSW), s. 155; *Petroleum (Onshore) Act 1991* (NSW), s. 69R.
47. *Mining Act 1992* (NSW), s. 141; *Petroleum (Onshore) Act 1991* (NSW), s. 69E
48. *Mining Act 1992* (NSW), s. 158; *Petroleum (Onshore) Act 1991* (NSW), s. 69U
49. *Mining Act 1992*(NSW), s. 141(4); *Petroleum (Onshore Act) 1991* (NSW), s. 69D.
50. See: <http://www.edo.org.au/edonsw/site/publications.php>
51. See: <http://www.resources.nsw.gov.au/landholder-information/template-for-land-access>
52. *Mining Act 1992*(NSW), s. 141(2A).
53. *Mining Act 1992* (NSW), s. 265; *Petroleum Act 1991* (NSW), s. 107.
54. *Mining Act 1992* (NSW), s. 265; *Petroleum Act 1991* (NSW), s. 107.
55. *Mines Subsidence Compensation Act 1961* (NSW), s. 12. 'Improvements' include; houses, swimming pools, sewer pipes, patios and fences.
56. See: <http://www.minesub.nsw.gov.au>
57. *Mining Act 1992*(NSW), s. 141; *Petroleum (Onshore) Act 1991*(NSW), s. 69D.
58. *Mining Act 1992*(NSW), s. 276; *Petroleum (Onshore) Act 1991*(NSW), ss. 108.
59. *Mining Act 1992* (NSW), s. 272(1)(c). The market value does not include the value of the land and building's use for mining purposes.
60. *Andrewartha & Ors v BHP Steel (A/S) Pty Ltd*, available at: http://www.lawlink.nsw.gov.au/lawlink/lec/II lec.nsf/pages/LEC_mining_warden_decisions_type
61. *Mining Act 1992* (NSW), ss. 378D, 378H.
62. *State Environmental Planning Policy (State and Regional Development) 2011*, Sch. 1(7); *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 3(19).
63. *Environmental Planning and Assessment Act 1979* (NSW), s. 123.
64. *Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council and Stoneco Pty Limited* [2010] NSWLEC 48

11.0 Heritage Protection

What are heritage items?

Buildings, places, objects and relics with heritage significance may be protected under Federal, State or local heritage laws.

11.1 LOCAL HERITAGE PROTECTION

The majority of heritage protection in NSW is carried out by local councils. All local councils are required to identify items of local heritage significance in a heritage schedule to the Local Environmental Plan.¹ There is also a [clause](#) in the Standard Instrument LEP that all councils must adopt that deals with heritage conservation.²

The Minister for Heritage can make or can authorise a council to make an interim heritage order for items of local heritage significance in the council area.³ An interim heritage order can last for up to 12 months,⁴ during which time the local council must decide whether to place the item on the heritage Schedule of its LEP or have the item listed on the State Heritage Register (see below).

11.2 STATE HERITAGE PROTECTION

State Heritage Register

Natural, cultural, and built heritage is protected in NSW by listing the item or place on the State Heritage Register.⁵ Such listing means that a person cannot damage, destroy, alter or move the item, building or land without approval from the Heritage Council.

Interim heritage orders

An interim heritage order is a temporary form of protection over an item or land that can be used while further investigation of the heritage value of the item is carried out. An interim heritage order can be made by the Minister for Heritage. The majority of interim heritage orders are made in response to community representations or concerns raised by local councils. Interim heritage orders can last for up to 12 months,⁶ and can be revoked by the Minister.⁷

Emergency orders

The Minister for Heritage or the Chair of the Heritage Council can make an emergency order to stop work on a site if a heritage building, work, relic or place is being harmed or is about to be harmed.⁸ These orders can only be used where the item or land is not already covered by an interim heritage order or listed on the State Heritage Register.⁹ They cannot be made over State significant development or State significant infrastructure.¹⁰ Emergency orders last for 40 days.¹¹ Within that time, the Heritage Council must assess the heritage value of the item or place and give advice to the Minister for Heritage as to whether an interim heritage order should be made.¹²

What is the Heritage Council of NSW?

The Heritage Council¹³ is an advisory body whose members are appointed by the Minister for Heritage,¹⁴ and includes representatives from the community who have qualifications in things like architecture, local government, environmental law, conservation of environmental heritage, Aboriginal cultural heritage, and rural interests. The Director-General of the Department of Planning and Infrastructure is also required to be a member, as is a nominee of the National Trust of Australia (NSW).¹⁵

The Heritage Council makes decisions about the care and protection of heritage places and items that have been identified as being significant to the people of NSW and provides advice on heritage matters to the Minister responsible for heritage in NSW.¹⁶ It also makes recommendations to the Minister on places and objects for listing on the State Heritage Register.¹⁷

11.3 FEDERAL HERITAGE PROTECTION

There are a number of ways heritage can be protected at the Federal level.

World Heritage Area

World Heritage Areas must be nominated by the Australian Government as a world heritage area before they can be listed. Once an area is listed, the Federal Minister for the Environment must assess and approve any action that is likely to have a significant impact on it.¹⁸

National Heritage List

The National Heritage List includes natural, historic and Indigenous places of outstanding heritage value. You can nominate a place for inclusion on this list if it satisfies at least one of the National Heritage [criteria](#).¹⁹ The Federal Minister for the Environment decides if a place will be listed. If a place is listed a management plan may be prepared and the Federal Minister for the Environment must assess and approve any action that is likely to have a significant impact on it.

Commonwealth Heritage List

This [list](#) comprises natural, Indigenous and historic heritage places on Commonwealth lands and waters.²⁰ The same process is followed as for listing on the National Heritage List. If a place is listed a management plan may be prepared and the Federal Minister for the Environment must assess and approve any action that is likely to have a significant impact on it.

What is Aboriginal cultural heritage?

Cultural heritage includes objects and places that are significant to Indigenous people under Aboriginal or Torres Strait Islander tradition.

‘Aboriginal objects’ are defined as deposits, objects or material evidence relating to Aboriginal habitation of NSW,²¹ and include Aboriginal remains. These things legally belong to the Crown (the Government).²²

An 'Aboriginal place' is a place which, in the opinion of the NSW Minister for the Environment, is or was of special significance to Aboriginal people.²³ In other words the Minister needs to be convinced that a place should be declared an Aboriginal place.

Aboriginal cultural heritage is protected under both NSW and Federal laws. For more information about Aboriginal cultural heritage in NSW, read our publication [*Caring for Country: A Guide to Environmental Law for Aboriginal Communities in NSW*](#).²⁴

11.4 LOCAL PROTECTION

All local councils must provide for the conservation and management of Aboriginal heritage when making Local Environmental Plans unless they can justify why they should not.²⁵ The LEP Standard Instrument requires local councils to conserve Aboriginal objects and Aboriginal places of heritage significance by requiring a development application to be lodged for anything that impacts Aboriginal cultural heritage. The council is required to consider the effect of a development on Aboriginal cultural heritage before making a decision on a development application.²⁶ However, some developments that may have an impact on Aboriginal cultural heritage do not require development consent.²⁷

11.5 STATE PROTECTION

The Office of Environment and Heritage (OEH) is responsible for protecting Aboriginal cultural heritage in NSW. Aboriginal cultural heritage is protected in the following ways in NSW:

- Land can be dedicated as an Aboriginal Area to preserve, protect and prevent damage to Aboriginal objects or Aboriginal places on that land.²⁸
- Subject to other legislation, a Stop Work Order can be issued for up to 40 days if a current or future action is likely to significantly affect an Aboriginal object or Aboriginal place.²⁹
- An Interim Protection Order can be made to preserve land with Aboriginal places or objects on it, for a period no longer than 2 years.³⁰
- A Conservation Agreement can be entered into with landowners to protect areas which contain objects or Aboriginal places of special significance.³¹
- Destroying or damaging items or places of Aboriginal heritage value without an approval is a criminal offence.³²

Cultural heritage items or places can also be protected via the [*State Heritage Register*](#).³³

There is a process for determining whether a developer needs to obtain an [*Aboriginal Heritage Impact Permit*](#) (AHIP) before commencing work on a development.³⁴ An AHIP is issued by the OEH and allows developers to harm Aboriginal objects and places where it 'cannot be avoided', and specifies the way that the impacts of the development on Aboriginal objects and places should be managed. An AHIP is not required for State significant developments and State significant infrastructure.³⁵

11.6 FEDERAL PROTECTION

Aboriginal cultural heritage can be given national protection in a number of ways. An area may be listed as a [World Heritage Area](#)³⁶ or as [National Heritage](#),³⁷ listed under the [Commonwealth Heritage List](#)³⁸ or the [National Estate Register](#),³⁹ protected under the Federal Indigenous Heritage Protection law,⁴⁰ or listed as Native Title. The Federal Minister for Aboriginal Affairs can make a protective declaration over areas that contain Indigenous objects and remains that are being injured or desecrated.⁴¹

Who can destroy cultural heritage?

Anyone can destroy cultural heritage if they have approval from the relevant government department. There is no guarantee that protected cultural heritage will not be damaged or destroyed. For example, the OEH can give permission for the destruction of cultural heritage by issuing an Aboriginal Heritage Impact Permit.⁴²

What if cultural heritage is damaged without approval?

It is an offence to harm or desecrate an Aboriginal object or place without a permit.⁴³ The penalties are higher for intentional harm.

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1. See Chapter 1 for more information on Local Environmental Plans.
 2. *Standard Instrument – Principal Local Environmental Plan*, cl. 5.10 – Heritage conservation.
 3. *Heritage Act 1977* (NSW), s. 25.
 4. *Heritage Act 1977* (NSW), s. 29.
 5. *Heritage Act 1977* (NSW), Part 3A.
 6. *Heritage Act 1977* (NSW), s. 29.
 7. *Heritage Act 1977* (NSW), s. 29.
 8. *Heritage Act 1977* (NSW), s. 136.
 9. *Heritage Act 1977* (NSW), s. 136.
 10. *Environmental Planning and Assessment Act 1979* (NSW), ss. 89J, 115ZG.
 11. *Heritage Act 1977* (NSW), s. 136.
 12. *Heritage Act 1977* (NSW), s. 136.
 13. The Heritage Council is established under the *Heritage Act 1977* (NSW).
 14. *Heritage Act 1977* (NSW), s. 8; *Allocation of the Administration of Acts*.
 15. *Heritage Act 1977* (NSW), s. 8.
 16. *Heritage Act 1977* (NSW), s. 21.
 17. For more information visit : <http://www.environment.nsw.gov.au/heritage/heritagecouncil/role.htm>

18. *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 12.
19. The criteria for the National Heritage list and the nomination form can be found at: <http://www.environment.gov.au/heritage/nominating/index.html>
20. See: <http://www.environment.gov.au/heritage/places/commonwealth/index.html>
21. *National Parks and Wildlife Act 1974* (NSW), s. 5.
22. *National Parks and Wildlife Act 1974* (NSW), s. 83. There are policies that encourage repatriation of Aboriginal ancestral remains back to Aboriginal communities when they can be identified either by documentation or other scientific means. Section 85A of the *National Parks and Wildlife Act 1974* (NSW) also allows for the transfer of Aboriginal objects to an Aboriginal person or Aboriginal organisation for safekeeping. The person or organisation must enter into a 'care agreement' with the Office of Environment and Heritage (OEH), using a standard form available from the OEH website: <http://www.environment.nsw.gov.au/licences/CareAgreements.htm>.
23. *National Parks and Wildlife Act 1974* (NSW), s. 84.
24. See: <http://www.edo.org.au/edonsw/site/pdf/pubs/120924CaringforCountry2012.pdf>
25. Direction 2.3 under the powers conferred by s. 117 of the *Environmental Planning and Assessment Act 1979* (NSW). *Environmental Planning and Assessment Act 1979* (NSW), s. 55(2)(c).
26. *Standard Instrument – Local Environmental Plan* cl. 5.10.
27. *Standard Instrument – Local Environmental Plan* cl. 5.10.
28. *National Parks and Wildlife Act 1974* (NSW), ss. 30K, 62.
29. *National Parks and Wildlife Act 1974* (NSW), ss. 91AA, 91DD (3)-(5).
30. *National Parks and Wildlife Act 1974* (NSW), ss. 91A, 91D(1).
31. *National Parks and Wildlife Act 1974* (NSW), s. 69B, 69C(1)(d).
32. *National Parks and Wildlife Act 1974* (NSW), s. 86.
33. *Heritage Act 1977* (NSW), Part 3A. See: <http://www.environment.nsw.gov.au/heritage/index.htm>
34. See: <http://www.environment.nsw.gov.au/licences/ahips.htm>
35. *Environmental Planning and Assessment Act 1979* (NSW), ss. 89J, 115ZG.
36. See: <http://www.environment.gov.au/heritage/places/world/index.html>
37. See: <http://www.environment.gov.au/heritage/places/national/index.html>
38. See: <http://www.environment.gov.au/heritage/places/commonwealth/index.html>
39. See: <http://www.environment.gov.au/heritage/places/rne/index.html>
40. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).
41. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), ss. 9(1), 12(3), 12(4).
42. *National Parks and Wildlife Act 1974* (NSW), s. 90.
43. *National Parks and Wildlife Act 1974* (NSW), s. 86.

12.0 Conservation on Private Land

Conservation on private land is a vitally important element of biodiversity protection in Australia. Due to the limited availability of public land for habitat protection, private landholders hold the key to the survival of many flora and fauna communities.

There are a number of programs through which landholders can voluntarily conserve areas of ecological value on their properties. They range from non-binding, temporary agreements to binding agreements that are attached perpetually to the title of the land, known as 'covenants'. Such agreements may impose restrictions on the use of the land, or require landholders to carry out particular actions to improve the ecological value of the land.

Covenants do not have to be about totally restricting the use of land, they just restrict uses that are incompatible with conservation aims.

The main private conservation options are set out below. For further information on any of these options, see the EDO's publication [A Guide to Private Conservation in NSW](#).¹

You can also order a hard copy of the publication by emailing education@edo.org.au or calling 02 9262 6989. You could also contact the administrator of the particular scheme you are interested in.

12.1 CONSERVATION AGREEMENTS

Conservation Agreements aim to protect the natural or cultural conservation values of private land.²

Conservation Agreements are negotiated between landholders and the Office of Environment and Heritage (OEH) but the agreement itself is between the landholder and the Minister for the Environment. All people with an interest in the property have to consent in writing to the agreement, which includes the NSW Aboriginal Land Council, if it owns the land.³

A Conservation Agreement is a statutory covenant which is attached to the title of the land. This means that when the agreement comes into effect, the land still remains in the ownership of the landholder and any future purchasers are then required to manage the property in accordance with the conservation agreement.⁴ Conservation Agreements can be enforced in the Land and Environment Court.⁵

OEH will only enter into a Conservation Agreement involving land of high conservation value.⁶

Landholders who enter into Conservation Agreements can access a range of tax concessions and may be eligible for grants to help meet the costs of managing the conservation area.

Before you enter any private Conservation Agreement you should consider getting specific financial advice from a professional, such as an accountant, that applies to your situation.

For more information, [contact OEH](#).⁷

12.2 TRUST AGREEMENTS

The Nature Conservation Trust ('Trust') is a non-government organisation that was established to foster conservation on privately managed land in partnership with landholders. The Trust is

funded largely through philanthropy and industry investment.

The Trust actively promotes the long term protection of threatened species and habitats by registering Trust Agreements on the titles of properties belonging to rural landholders who wish to set aside part of their land for conservation.

The consent of all the people with an interest in the land is required, and agreements will run with the land and bind future landholders.⁸ The agreements may provide for technical, financial and other types of support.⁹ Some tax concessions are also available. Before you enter into a trust agreement you should consider getting specific financial advice from a professional, such as an accountant.

The Trust is particularly interested in conserving land with high conservation values.¹⁰

The Trust also has programs targeting particular areas and conservation outcomes and these priorities change over time.

For more information, contact the [Nature Conservation Trust of NSW](#).¹¹

12.3 PROPERTY VEGETATION PLANS

Property vegetation plans ('PVPs') are a way for landholders to protect native vegetation on their property.¹² They are made between the landholder and the Catchment Management Authority and describe how the native vegetation on your property is to be managed.

There are several different types of PVPs. The two most relevant for conservation are:

- Conservation PVPs
- Incentive PVPs

Conservation PVPs and Incentive PVPs should be distinguished from Clearing PVPs. Clearing PVPs provide a mechanism for authorising the clearing of native vegetation whereas Conservation PVPs and Incentive PVPs are used to restore degraded land or protect native vegetation.

Clearing PVPs are also discussed in Chapter 2.0 – Vegetation Management.

The CMA has funding available to help meet the aims of their catchment action plan and landholders with Incentive PVPs can apply for this funding if their proposed works will help meet those aims. Conservation PVPs do not involve incentive funding.

PVPs can be tailored to be compatible with sustainable farming and they can cover more than one property. However, once a PVP is entered into, you are bound to manage your land in accordance with the obligations set out in the PVP. An Incentive PVP is a good way to access funding to improve the conservation values of your land. Furthermore, a Conservation PVP or an Incentive PVP may lead to the land being eligible for a Conservation Agreement or Trust Agreement later on.

For more information on PVPs, contact your local [Catchment Management Authority](#).¹³

12.4 WILDLIFE REFUGE AGREEMENTS

Wildlife Refuge Agreements are legally binding agreements made between the landholder and the NSW Minister for the Environment.¹⁴ While these agreements are binding when in place,

they can be removed or altered at any time if the landholder requests it.¹⁵

These agreements allow a landholder to voluntarily nominate all or part of their property to be managed for wildlife conservation and the conservation of natural environments.

Wildlife Refuge Agreements are suitable for properties that might not qualify for protection under a Conservation Agreement or Trust Agreement as they can support the recovery or regeneration of land for wildlife protection.

Wildlife Refuge Agreements also provide legal protection by making it an offence for a person to harm any fauna or pick any native plants in the wildlife refuge.¹⁶

If you enter into a Wildlife Refuge Agreement, you can also apply for the additional protection of a restrictive covenant to be placed on your land. A restrictive covenant is a notice which is registered on the certificate of title to your property and will extend your obligations under the Wildlife Refuge Agreement to all future owners of your land and provide a more formal and lasting protection for your property.¹⁷

For more information, [contact OEH](#).¹⁸

12.5 LAND FOR WILDLIFE

Land for Wildlife is a voluntary national support program that encourages and assists landholders to conserve wildlife and habitat on their land. In New South Wales, the program is facilitated by OEH and Community Environment Network (CEN) and is implemented by community groups or local government.

The program provides for the registration of participating properties, but it is not legally binding and does not change the legal status of the property. Participating landholders become part of a conservation network, and are provided with technical advice and educational material about wildlife habitat management.

For more information, contact OEH or the Community Environment Network (CEN) on 4349 4756.

12.6 CARING FOR OUR COUNTRY PROGRAM

The Commonwealth Government's Lands and Coasts team which comprises representatives from the Department of Sustainability, Environment, Water, Population and Communities and Department of Agriculture, Fisheries and Forestry oversees the funding of a number of programs under the umbrella of 'Caring for our Country'.

Funding from 2008 to 2013 is being invested in six national priority areas:

- Northern and remote Australia
- Community skills, knowledge and engagement
- The National Reserve System
- Biodiversity and natural icons;
- Coastal environments and critical aquatic habitats; and
- Sustainable farm practices.

It also covers a number of programs including:

- The Environmental Stewardship program, which offers funding contracts to landholders to achieve long term environmental outcomes on their properties. Contracts are offered through auctions, tenders and other market-based mechanisms.¹⁹
- The National Landcare Program, which provides funding for the development of community-initiated and managed projects with a focus on natural resource management for the public benefit.²⁰
- Community Action Grants, which are small grants of funding (\$5,000-\$20,000) for communities to take action at the local level to protect and enhance their natural environment.²¹

*To receive notification of upcoming funding rounds for Landcare, register on the [Landcare National Directory](#).*²²

*For further information on other Caring for our Country initiatives, contact the [Commonwealth Government's Land and Coasts team](#).*²³

Private Protected Areas

As part of the Caring for our Country program, the Commonwealth Government provides for the establishment of Private Protected Areas. Under this scheme, properties of outstanding conservation value are managed by a partner conservation organisation, such as the Australian Wildlife Conservancy or Bush Heritage Australia.²⁴ These organisations buy private property and/or work with the current landholders to implement conservation programs and activities, which include feral animal and pest eradication, weed control, fire management and translocation of threatened species.

Through this program, the Commonwealth Government provides a contribution of up to two thirds of the purchase price to assist the conservation organisation to purchase the property. In exchange for this assistance, there is a requirement that a protective covenant is attached to the title to the property.

For a property to be considered for inclusion in the program it must meet a set of criteria.²⁵

*For more information, contact the [Commonwealth Government's Land and Coasts team](#).*²⁶

Australian Wildlife Conservancy

The Australian Wildlife Conservancy ('AWC') is an independent, non-profit organisation dedicated to the conservation of Australia's threatened wildlife and ecosystems.

AWC takes action to protect Australia's wildlife by: acquiring land to establish sanctuaries, implementing practical, on the ground conservation programs such as feral animal eradication, conducting scientific research and undertaking public education programs to raise awareness of the plight of Australia's wildlife.²⁷

*For more information, contact [Australian Wildlife Conservancy](#).*²⁸

Bush Heritage Australia

Bush Heritage Australia (previously the Australian Bush Heritage Fund) maintains a portfolio of properties that contribute to the national protected area network. The fund purchases land of outstanding conservation value, particularly areas which may contribute significantly to biodiversity protection, and protects it permanently. Bush Heritage Australia is a non-profit organisation which obtains funds from donors.

Bush Heritage Australia's work in New South Wales focuses on properties which are located from the Victorian and South-Australian borders through the grassy box woodland communities and north along the west of the Great Dividing Range into central New South Wales. Bush Heritage Australia's work aims to focus on 'nodes' of activity, consolidating habitats and working with networks of landowners.²⁹

*For more information, contact [Bush Heritage Australia](#).*³⁰

12.7 DONATING LAND TO THE NSW FOUNDATION FOR NATIONAL PARKS AND WILDLIFE

The NSW Foundation for National Parks and Wildlife ('FNPW') is a non-profit fundraising organisation that deals with projects involving the care and protection of our parks and wildlife. The Foundation accepts donations and bequests of land suitable for nature conservation.

Depending on the wishes of the donor, the FNPW can sell the land and apply the funds for important land acquisitions or natural and cultural heritage projects, or transfer suitable land to the OEH.

Donations or bequests of land may provide opportunities for tax deductions, capital gains tax exemptions and stamp duty exemptions.³¹ You should seek independent financial advice if you are considering making a donation or bequest of land.

*For more information, contact the [NSW Foundation for National Parks and Wildlife](#).*³²

12.8 FOUNDATION FOR NATIONAL PARKS AND WILDLIFE GRANTS

The FNPW grants program supports nature and heritage conservation projects. Small grants of up to Grant amount vary but most are between \$5000- \$20,000 and are available to community groups, scientists and individuals that own a covenanted property. These grants are to be used to conduct native species or habitat conservation work.

*For more information on these grants and how to apply, see the [FNPW's website](#).*³³

12.9 RAMSAR LISTING

Both publicly and privately owned land containing wetlands can be protected under the *Convention on Wetlands of International Importance*³⁴ ('Ramsar Convention').

The Ramsar Convention encourages the conservation and wise use of wetlands by requiring member countries to nominate internationally significant wetlands and to prepare management plans to protect the listed wetlands.

In Australia, Ramsar wetlands are protected under Federal legislation.³⁵ Any person can propose a wetland for consideration for inclusion as a Ramsar wetland. The proposal is made

to the OEH which then consults with the landholder and considers whether the wetland adequately meets the Ramsar criteria and whether the proposal is supported by the relevant stakeholders. If OEH decides that the wetland is suitable for listing, the proposal is forwarded to the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities who can declare the wetland as a Ramsar site.³⁶

*For more information about proposing that a wetland be made a Ramsar site, visit [OEH's website](#).*³⁷

Gwydir Wetlands: A Privately-Owned Ramsar Site

The Gwydir wetlands are located about 60km west of Moree in northwest NSW. The site is comprised of four wetlands,* within the larger Gwydir wetlands. They cover 823 hectares and were listed as a Ramsar site in 1999.

The Gwydir site is one of the few terminal wetlands in inland NSW and it supports one of the largest remaining patches of water couch (*Paspalum distichum*) and marsh club-rush (*Bolboschoenus fluviatilis*) in NSW. The wetlands provide breeding and feeding grounds for vast numbers of water birds and habitat for many threatened species. The wetlands also continue to support agriculture industry such as beef cattle grazing.

The private landholdings are a mixture of freehold and perpetual leasehold titles. This was the first time that private landholders had voluntarily nominated their property for listing under the Ramsar Convention.

*One of the properties has since been sold to the Commonwealth Government and is going to become a National Park.

12.10 TAX INCENTIVES AND RATE RELIEF

Gifts or Donations of Property

Donations of property valued at over \$5000 (including land, buildings, shares and vehicles) to eligible environmental bodies, such as Bush Heritage Australia, enable the donor to gain an income tax deduction. Capital gains tax exemptions are also available for gifts of property bequeathed in a will.³⁸ The tax deduction can be spread over five years.³⁹

Covenanting Programs

Entering into a Conservation Agreement or a Trust Agreement may have tax implications. You should seek independent financial and legal advice about how the agreement may affect your tax situation before committing to the agreement.

12.11 PRIVATE CONSERVATION PRO BONO REFERRAL SERVICE

The Environmental Defender's Office, in partnership with the Public Interest Law Clearing House, has developed a Private Conservation Pro Bono Referral Service. The Referral Service will provide free access for landholders to independent legal advice from participating Australian law firms. The referral service is available for landholders entering a legally binding conservation mechanism.

*For more information or to access the Private Conservation Pro Bono Referral Service, [contact EDO NSW](#).*⁴⁰

1. See: <http://www.edo.org.au/edonsw/site/publications.php#private>
2. *National Parks and Wildlife Act 1974* (NSW), Part 4, Division 12.

3. *National Parks and Wildlife Act 1974* (NSW), s.69B.
4. *National Parks and Wildlife Act 1974* (NSW), ss. 69E, 69F.
5. *National Parks and Wildlife Act 1974* (NSW), s.69G.
6. See: DECCW, 'Conservation Agreements', available at <http://www.environment.nsw.gov.au/resources/cpp/LandholderHandbookMay2010.pdf> and DECCW, 'Conservation Partnerships', available at: <http://www.environment.nsw.gov.au/resources/cpp/10280ConservationAgreements.pdf>
7. See: <http://www.environment.nsw.gov.au/contact/>
8. *Nature Conservation Trust Act 2001* (NSW), ss. 30(3), 36-37.
9. (*Nature Conservation Trust Act 2001* (NSW), s. 33.
10. Nature Conservation Trust, 'Trust Agreement Info'. Available at: <http://nct.org.au/media/files/flyer/Trust%20Agreement%20Info.pdf>
11. See: <http://nct.org.au/what-we-do/about-nct/contact.html>
12. *Native Vegetation Act 2003* (NSW), Part 4; (*NSW Native Vegetation Act 2003* (NSW), Part 3.
13. See: <http://www.cma.nsw.gov.au/>
14. *National Parks and Wildlife Act 1974* (NSW), s. 68.
15. *National Parks and Wildlife Act 1974* (NSW), s. 68(3)(b).
16. *National Parks and Wildlife Act 1974* (NSW), Pt 4, Div 13.
- 17.
18. See: <http://www.environment.nsw.gov.au/contact/>
19. Australian Government, 'Caring for Our Country- Environmental Stewardship' <http://www.nrm.gov.au/stewardship/index.html>
20. Department of Agriculture, Fisheries and Forestry, 'What is Landcare?', www.daff.gov.au; Landcare Australia Limited, 'Government Partners' <http://www.landcareonline.com.au/>
21. See Australian Government, 'Caring for our Country- Community Action Grants' <http://www.nrm.gov.au/cag/cag-faq.html#overview>
22. See: <http://landcareonline.com.au/lal3/registration.aspx>
23. See: <http://www.nrm.gov.au/about/caring/aglc.html>
24. See Australian Government, 'Conservation Organisations' at: <http://www.environment.gov.au/parks/nrs/getting-involved/organisations/index.html>
25. For the criteria see, Department of Sustainability, Environment, Water, Population and Communities, 'National Reserve System protected area requirements' <http://www.environment.gov.au/parks/nrs/about/management.html>
26. See: <http://www.nrm.gov.au/about/caring/aglc.html>
27. Australian Wildlife Conservancy, 'About Australian Wildlife Conservancy' <http://www.australianwildlife.org/About-AWC.aspx>
28. See: <http://www.australianwildlife.org/>
29. Bush Heritage Australia, 'What We Do' http://www.bushheritage.org.au/what_we_do
30. See: <http://www.bushheritage.org.au/>
31. Foundation for National Parks and Wildlife, 'Donating Property' <http://www.fnpw.org.au/donate-property>

32. See: <http://fnpw.org.au/>
33. See: <http://www.fnpw.org.au/foundation-grants/conservation-grants>
34. *Convention on Wetlands of International Importance as Waterfowl Habitat 1971*, concluded 2 February 1971, 996 UNTS 245, entered into force 21 December 1975.
35. *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
36. *Environment Protection and Biodiversity Conservation Act 1999* (NSW), s. 17A.
37. See: <http://www.environment.nsw.gov.au/wetlands/RamsarNominationProtection.htm>
38. DEWR fact sheet: "Tax Incentives for Conservation", as updated at May 2012. Available at: <http://www.environment.gov.au/biodiversity/publications/fact-sheets/incentives.html>
39. DEWR fact sheet: "Tax Incentives for Conservation", as updated at May 2012. Available at: <http://www.environment.gov.au/biodiversity/publications/fact-sheets/incentives.html>
40. See: http://www.edo.org.au/edonsw/site/advice_line.php

13.0 Trading and Offsetting

13.1 BIOBANKING

The Biodiversity Banking and Offsets Scheme (BioBanking) was introduced by the NSW Government to give landowners a financial incentive to protect biodiversity on their property. The scheme enables landowners to be issued with tradeable biodiversity credits in return for agreeing to establish a BioBank site on their land and to manage and protect biodiversity on that site in accordance with a BioBanking Agreement.

These biodiversity credits can be sold for a profit to create a financial return for the commitment to protect biodiversity. A BioBanking Agreement is legally binding and runs with the land so it is also binding on any future land owners.¹

It is important that you obtain financial and legal advice before entering into a BioBanking Agreement.

A BioBanking Agreement is negotiated between the landowner and the NSW Minister for the Environment (Minister).

The BioBanking Agreement will outline the activities that must be undertaken to protect and conserve the biodiversity values of the BioBank site. These are called management actions.

A BioBanking Assessor will determine the type and quantity of biodiversity credits that the BioBanking Agreement will generate. They do this by applying the BioBanking Assessment Methodology.

The landowner can then sell the credits. The credits will usually be sold to a developer who wishes to offset the destruction of biodiversity associated with their development. The price of the credits will be negotiated between the seller and the purchaser and is likely to be affected by general principles of supply and demand.

A proportion of the money received for the credits is placed in a BioBanking Trust Fund and will be managed by the Office of Environment and Heritage (OEH) and released to landholders annually to assist with the implementation of management actions.

For further information about this scheme, contact the [OEH](#).²

13.2 CARBON OFFSET SCHEMES

Voluntary carbon market

A voluntary carbon market has developed in response to consumer interest in offsetting greenhouse gas emissions. Offsets are most often purchased for car and air travel or electricity consumption. Many companies in this market enter into agreements with farmers for them to grow and manage trees, then calculate the carbon stored in them and charge retail customers for the offsets created.

Various companies have set up carbon offset schemes. Landholders may be eligible to earn carbon credits as part of the Carbon Farming Initiative (see below).

Carbon sequestration rights are recognised as property rights under NSW law.³ This gives landholders a property interest in the carbon stored in trees on their land. The carbon sequestration rights may then be used to generate abatement certificates (or offsets) in the

voluntary carbon offset market.

What is the National Carbon Offset Standard?

The [National Carbon Offset Standard](#) is one way that organisations can take additional action to reduce carbon pollution beyond Australia's national targets.⁴ The Standard was developed by the Commonwealth Government to ensure that consumers can have confidence in the voluntary carbon offset market, the integrity of the offsets and carbon neutral products that they purchase.

In order for domestic offsets to comply with the Standard they are required to be additional, permanent, measurable, transparent, independently audited and registered.⁵

*To access a copy of the National Carbon Offset Standard, see the Commonwealth Department of Climate Change and Energy Efficiency's [website](#).*⁶

Carbon Farming Initiative

The Carbon Farming Initiative (CFI) is an Australian Government scheme which allows land managers to generate income by reducing carbon pollution. The CFI is part of the Australian Government's [Clean Energy Future Plan](#).⁷

The Clean Energy Future plan includes a [carbon pricing scheme](#) which puts a price on every tonne of carbon pollution released by Australia's top polluters.⁸

As part of this plan, the CFI allows landholders to earn carbon credits by storing carbon or reducing greenhouse gas emissions on the land. These credits, known as Australian Carbon Credit Units (ACCUs), can be sold to people and businesses who are required to, or who wish to, offset their emissions. ACCUs can be sold in both the voluntary carbon market (see above), or under the carbon pricing scheme.⁹

The CFI creates incentives for landscape rehabilitation which can be positive for both landholders and the environment.

CFI projects can fall into one of two categories:

- sequestration offsets projects; or
- emissions avoidance projects.

Sequestration projects remove carbon dioxide from the atmosphere through the sequestration of carbon through plants as they grow and increase organic matter in soil.¹⁰ An example of a sequestration project would be re-vegetation along waterways on your property. Sequestration projects must be permanent, because if the re-vegetated land is cleared, the carbon will be released back into the atmosphere.

Emissions avoidance projects reduce or avoid emissions of methane and nitrous oxide, or convert methane into carbon dioxide.¹¹ An example of an emissions avoidance project would be dietary supplements for dairy cattle that avoid or reduce the emission of methane from the cattle's digestive tract.

CFI projects must provide additional abatement than what would occur if the project was not undertaken. They must not be required by law, and must not be common practice.

Participation in the CFI is voluntary. In order to become a recognised offsets entity (ROE) and

create credits under the CFI, landholders need to pass the 'fit and proper person test' which means a landholder must:¹²

- be who they claim to be;
- not have been convicted of a crime relating to dishonest conduct or relating to the conduct of a business, breached the CFI or Registry legislation or the *National Greenhouse and Energy Reporting Act 2007* in the past; and
- not be insolvent.

For more information about the CFI, see the CFI [website](#).¹³

For a contact list of abatement providers that you could approach for more information on becoming involved in offsetting, see the [Carbon Offset Guide](#).¹⁴

Please note that this is a rapidly growing area and changing market and you should obtain independent legal advice before becoming involved in it.

What is the Australian Government's Clean Energy Future plan?

The Australian Government's Clean Energy Future plan is designed to meet Australia's emissions reduction targets in a flexible and cost effective manner while supporting an effective global response to climate change. A key component of this plan is the [carbon price mechanism](#).¹⁵

1. *Threatened Species Conservation Act 1995* (NSW), s. 127J.
2. For more information, see the OEH website at: <http://www.environment.nsw.gov.au/biobanking/trustfund.htm>
3. *Conveyancing Act 1919* (NSW), ss. 87A, 88AB.
4. See the National Carbon Offset Standard. Available at: <http://www.climatechange.gov.au/ncos>
5. National Carbon Offset Standard, Department of Climate Change and Energy Efficiency website. Available at: <http://www.climatechange.gov.au/~media/government/initiatives/ncos/NationalCarbonOffsetStandard-V2-20120628-PDF.pdf>
6. See: <http://www.climatechange.gov.au/ncos>
7. For more information about the Clean Energy Future Plan, visit the website at: <http://www.cleanenergyfuture.gov.au/>
8. See: <http://www.cleanenergyfuture.gov.au/clean-energy-future/carbon-price/>
9. The Carbon Farming Initiative Handbook: <http://www.climatechange.gov.au/government/initiatives/carbon-farming-initiative/~media/government/initiatives/cfi/handbook/CFI-Handbook-20120403-PDF.pdf>
10. The Carbon Farming Initiative Handbook: <http://www.climatechange.gov.au/government/initiatives/carbon-farming-initiative/~media/government/initiatives/cfi/handbook/CFI-Handbook-20120403-PDF.pdf>
11. The Carbon Farming Initiative Handbook: <http://www.climatechange.gov.au/government/initiatives/carbon-farming-initiative/~media/government/initiatives/cfi/handbook/CFI-Handbook-20120403-PDF.pdf>
12. *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth), s. 64.
13. See: <http://www.climatechange.gov.au/cfi/>

14. See: www.carbonoffsetguide.com.au
15. Established under the *Clean Energy Act 2011* (Cth). See: <http://www.cleanenergyfuture.gov.au/clean-energy-future/carbon-price/>

14.0 Legal Options: Breaches of Environmental Law

A great way to protect the environment is to limit your own impact. The environmental organisations listed at the back of this guide may have tips and advice for limiting your impact on the environment.

14.1 GETTING INVOLVED

One of the best ways to protect the environment is to be involved in the planning system. The following information is designed to assist community members to participate more effectively in planning and decision-making.

How are Local Environmental Plans made and how can I be involved?

Draft LEPs and amendments to LEPs (also known as planning proposals) are prepared by 'relevant planning authorities'. Usually this is the local council but it can also be a Joint Regional Planning Panel¹ or the Director-General of the Department of Planning and Infrastructure.²

Before a planning proposal can become a LEP it must go through the 'gateway process'. Only relevant planning authorities can sponsor a planning proposal through the gateway process.³ However, an individual or organisation could prepare a planning proposal, usually an amendment to a LEP such as a spot rezoning, and seek support from a relevant planning authority to sponsor it through the gateway process.

The gateway process involves the Minister for Planning and Infrastructure or a delegate reviewing the planning proposal at a preliminary stage and then deciding whether the planning proposal is to proceed.⁴ The role of the gateway is to act as a checkpoint to ensure that the planning proposal is justified before further studies are done and resources are allocated to the preparation of a plan.

If a planning proposal makes it through the gateway, the Minister or delegate will decide what community consultation is required, including whether a public hearing will be necessary as well as which other government agencies should be consulted. The Minister or delegate will also set time limits for the completion of the process.

Community consultation is usually invited by way of written submissions, and there may be an opportunity to attend a public hearing. It is important to participate in these formal processes as they provide the only opportunity for the community to have input into the final LEP. It can be a more effective and efficient use of your time to get involved in the planning system at this level than to oppose specific developments later on.

Your council should notify you when a new LEP is being made or when a LEP is being amended. You can track the progress of a planning proposal through the gateway process on the Department of Planning and Infrastructure online [LEP tracker](#).⁵

For more information on planning proposals and the process for making LEPs, see our fact sheets.⁶

How can I find out about proposed developments in my community?

The right of the public to be notified and consulted on a development depends on the type of development. Notification methods can vary. For some types of development an announcement will be made in the local paper. For others a letter will be sent to all neighbours.

All State significant development and State significant infrastructure applications are placed on the Department of Planning and Infrastructure's [major projects website](#). Most local councils display current development applications on their website – particularly applications for designated development.

Public notification of proposed developments

- **Exempt and complying development**

There is no right to be notified or to comment on exempt and complying development applications. Neighbours will receive a courtesy notice within 10 days of a complying development certificate being issued. Changes are proposed that will ensure that neighbours are informed about an approval before construction begins.⁷

- **Advertised development**

Some Development Control Plans deal with notification requirements for certain types of development. These provisions are legally binding and you have a right to be notified of any development covered by the DCP.

- **Designated development**

All designated development must be publicly notified for at least 30 days and the public has the right to comment.⁸

- **State significant development and State significant infrastructure**

All SSD and SSI developments must be publicly notified for at least 30 days and the public has a right to comment.⁹

Public notification of federal assessments

For developments requiring assessment and approval by the Federal Minister for the Environment there is a period of 10 business days for the public to comment (with no extensions). You can find out when a proposal is available for comment by looking at the [EPBC Act website](#).¹⁰

Public notification of environment protection licence applications and variations

The EPA must publish the details of each environment protection licence application it receives on its [public register](#).¹¹ You can make a submission about an environment protection licence and the EPA must consider public submissions when deciding whether to grant a licence, including any public submissions made under the development consent process.¹² The EPA will publish an application to vary a licence on its [website](#)¹³ and invite public comment where the variation will authorise a significant increase to the environmental impact of the activity, or where the variation has not been subject to environmental assessment under planning laws.¹⁴

Obtaining information

To participate effectively in government processes, you need as much information as possible about your issue. Much of this information is publicly available free of charge. Other information may only be obtained through formal processes such as an application under the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act).

Information you may need

The following is a list of information you may need, and where you can find it. This list is not exhaustive. You may need different information depending on your objectives.

For making submissions on planning proposals

- All existing environmental planning instruments and zoning laws that apply to the area.
- The planning proposal. This will be advertised and on public display.
- Environmental studies commissioned by the council, if any. These will be displayed with the planning proposal.
- Any reports or minutes of meetings held by the local council and its relevant committees. Council meetings are generally open to the public and most councils have business papers available on request. Some councils also publish them on their website. These papers often include important reports of council officers, giving the history of the matter and the particular officer's appraisal of the issue. They also contain an insight into what the council hopes to achieve by developing or amending a LEP.
- Any independent studies available. Contact local and peak conservation groups to see if they have any information about your area.

For making submissions on development applications

- You will need most of the information listed above as well as:
- The development application. The local council must allow you to view the development application upon request. You are allowed to make a copy but may have to pay reasonable copying costs. Some development applications may also be available on the council website or the Department of Planning and Infrastructure website.
- All supporting documents for the development application such as environmental assessment reports.
- Expert opinion or at least well-informed opinion on the potential harm you are concerned about. List your concerns, referring to particular proposed consent conditions if relevant. This is not essential at this stage but will give your submission more force.

Access to Information

Access to information laws exist at both State and Federal levels to provide the public with a general, legally enforceable right of access to government information. Before making an application, it's worth considering whether you can get the information another way. For example, someone else may have the information or you may be able to inspect or get copies of documents informally. This approach is often preferable given the cost and delay involved with applications for government information and the many instances where governments are exempt under the laws from the requirements to disclose information. Always ask for the information before making a formal request.

The *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) gives you a legally enforceable right to:

- See records of NSW Government Ministers, Departments and agencies, local government and some other public bodies,

- Request changes to personal information if it is inaccurate, and
- Appeal against a decision not to grant access to a document or amend a personal record.

Many government departments and agencies have an officer who you can contact for more information about your right to see documents.

For more information see our [Fact Sheet on Access to Information](#).¹⁵

Writing submissions

Written submissions are the main way for the community to participate in environmental decision-making so it is important to write submissions that will clearly and effectively communicate your points. This section provides tips on how you can prepare a submission that is as persuasive as possible. The information here can be applied to submissions on planning proposals, development applications and law reform proposals.

Identify key issues

Work out what your key concerns are and focus on these. If you try to include everything you can possibly think of in the submission the good points will get lost in the weaker points and your submission will be less effective.

Support arguments with facts

Include factual information to back up your arguments. Your arguments will be better received if they are supported by evidence and you will have a far greater chance of influencing the decision maker than if you lodge a submission containing only unsubstantiated claims.

Where possible, attach relevant supporting documents, physical evidence, observations and opinions from scientists to support what you are saying.

Use a clear structure and layout

Use headings and bullet points to highlight key concerns. Use summaries to highlight key recommendations/concerns.

Remember the decision-maker may receive many submissions so you want yours to be easy to read and well expressed. Write clearly and concisely. A rambling stream of consciousness will not effectively communicate your ideas.

Write objectively

Use clear, calm language and maintain a professional style. Overly emotional arguments are not as convincing and often have an adverse effect upon the reader.

Make recommendations

Tell the decision-maker what you want them to do. Including recommendations such as conditions of approval that you think should be attached to a development and changes that you think should be made to a planning proposal. Offering decision-makers feedback and solutions rather than just criticism is an effective way to engage in decision-making processes.

Be on time

Have your submission in on time. If you cannot meet the deadline ask for an extension, or if an extension is not granted, do the best you can in the time frame.

Follow up

Follow up on your submission – follow up phone calls to the decision-maker can ensure that your issues are at the forefront of their minds at all times. You may wish to try to arrange a meeting with the decision-maker or their advisors. If you do meet with them, it is a good idea to have a one-page summary of your submission and recommendations to hand them at the meeting. It is important to remember that there is a point at which you can begin to annoy the decision-maker, so try to limit calls and meeting requests unless you have new information for the decision-maker.

Other things to keep in mind

Include your name and contact details on your submission.

Avoid 'pro forma' or pre-prepared submissions where possible, and encourage people to write in their own style.

It may be worth considering mounting a wider campaign against the proposal, including through newspapers and social media.

For more information about writing submissions, [read our Fact Sheet](#).¹⁶

Appearing at a public hearing

Sometimes, there will be a public hearing about a proposal. This may be before the council, the Joint Regional Planning Panel¹⁷ or the Planning Assessment Commission. A public hearing gives the public the opportunity to comment on planning proposals and development applications by bringing potential issues to light. It is important for individuals making submissions during public hearings to keep in mind the terms of reference for the hearing, as the planning body holding the hearing is bound by the terms of reference which limits the matters that it can consider. In this respect, there is nothing to be gained from attacking the planning body members or questioning their authority. Other things to keep in mind are:

- dress neatly, as if you were going to court;
- be punctual, make sure you are there on time;
- speak clearly and loudly;
- practise beforehand and time yourself so you can be sure that you will fit in all of your key points;
- come prepared with a list of points you want to cover during your presentation; and
- try to keep track of time while you are presenting.

Some public hearings may have binding time frames in place to achieve greater efficiency during the hearing. This creates issues when important, sometimes critical, submissions are being presented to the planning body for consideration, but the presenter's allocated time is up. The chairperson gives a warning shortly before the presenter's time is up, and may cut the presenter off if they continue to speak beyond their allocated time.

Public hearings are quite formal in nature. It is important to inform yourself of who you will be presenting before and what their procedures are.

Other ways to achieve environmental outcomes

There are many things you can do to influence decision-makers and achieve positive environmental outcomes. You can write letters, meet with decision-makers or getting media

coverage for your issue. You should focus your attention on key decision-makers such as local councillors, Ministers, members of Parliament, and industry bodies.

Letters

Writing a letter to a politician, whether local, State or Federal, is a powerful tool. The receipt of letters, particularly from local constituents, on a particular issue can motivate a politician to find out more about that issue and take action to satisfy the concerns of voters. This is of particular use when elections are scheduled. Letters are most effective when many people write to the same politician. Avoid 'pro-forma' or pre-prepared letters where possible, and encourage people to write in their own style.

Writing to other decision-makers, such as a Minister, a developer, a government agency or regional committee, is also effective in raising awareness of your concerns early on, and in opening communication with various decision-makers. This may help to resolve the areas of concern without resorting to legal action.

Many of the same considerations for writing submissions apply to writing letters.

Petitions

Petitions to government can give you the numbers to encourage decision-makers to take your concerns seriously.

Petitions may be presented to any person, to local councils, or to State or Federal Parliaments. Petitions to State or Federal Parliaments must be presented by a Member of Parliament.

There are guidelines for the format of petitions to State and Federal Parliaments. To get a copy of these guidelines, call the State or Federal Parliament or visit one of the [State Parliament](#)¹⁸ and [Federal Parliament](#)¹⁹ websites.

Email petitions, where an email is forwarded inviting people to add their names to the bottom of lists, are not well regarded. This is because the names are repeated on a number of different emails so it is not an accurate reflection of the numbers of people who signed the petition.

A more effective choice is the internet petition where supporters are directed to a specific website to add their names to a single list.

Information Sheet

An information sheet, or fact sheet, summarising key concerns can help people to engage in the issue. Sometimes EDO NSW prepares briefing notes for environmental law and policy proposals which are on public exhibition. [Visit our website](#) for more information. Here are some useful tips:

- keep the information simple and accurate;
- keep it short, no more than one or two pages;
- state the most dramatic or influential aspect in the first paragraph;
- distribute the fact sheet at community events, stalls, through community centres or through a letterbox drop and, if you find enough support, call a public meeting. If you organise a public meeting or rally, you may need to inform the Commissioner of Police;
- do not make defamatory statements - quote the sources of information;

- include practical suggestions for how people can get involved, such as writing a letter, what key points they may address in the letter, donating money or volunteering; and
- include phone, fax, email and website contact details for more information.

Engaging the media

The media is an important tool for informing large numbers of people and gathering support for your issue.

Newspapers

Press releases and press briefings keep the media informed of your campaign. Briefings (a 1-2 page summary of the issues and your activities) are useful to provide to journalists who specialise in environmental reporting, or who have expressed an interest in reporting on your issue.

Press releases are useful to notify the media of major events relating to your issue and should:

- Express your main point in the heading and first paragraph. Think of an upside down triangle with the most important information at the top. Don't get bogged down in technical detail.
- Deal with one issue at a time.
- Be kept short and clear.
- Include the name of your group and contact numbers of people who can provide more information.

Press releases sent to a particular person are more likely to be read. Contact relevant journalists before and after the event you want them to cover. Try to avoid relying on social media to contact journalists, and try calling or emailing them instead.

Radio and TV

Prepare what you are going to say before an interview and condense it into about three sentences. In a 30 second timeslot on television or radio news (known as a 'grab'), you will often only be able to make one point. Decide on that point in advance and repeat it during the interview, rather than trying to make many points and possibly having only what you consider to be a minor point reported. If possible, have a chat with the reporter beforehand to make sure they have enough information to ask relevant questions of you.

14.2 TAKING LEGAL ACTION

There are alternative dispute resolution tools such as mediation which can be used to try to reach an agreement acceptable to both parties which you should consider before taking legal action. In some cases, however, it may be necessary to go to Court.

Before considering court action you should speak to a solicitor and carefully consider the implications, particularly the cost implications. Court actions are expensive in both terms of money and time. If you are unsuccessful, you may be required to pay the costs of the other parties to the proceedings. An unsuccessful action can create a bad precedent for future Court actions. As a result, Court action is usually only considered as a last resort.

This Chapter outlines some of the more typical legal actions that can be brought in relation to environmental and planning disputes.

Challenging development consents and other planning decisions

The decision to grant development consent to a project can sometimes be challenged in Court. There are two main types of challenge – merits appeals and judicial review.

Merits appeals

In a merits appeal you are arguing that the decision-maker should not have made the decision that he or she did. The Court stands in the shoes of the original decision-maker and will look at all the information that the decision was based on (such as the development application and the environmental assessment), as well as any fresh evidence which has been placed before it.

It is therefore important to have evidence to show why the project should not have been approved as it was.

Merits appeals often begin on site. Local residents are usually able to appear at the beginning of an on-site hearing to address the Judge or Commissioner and give evidence about what impacts the proposal will have on them or their property. Any person who chooses to give evidence can be cross-examined by the other parties' lawyer.

In a merits appeal, the Court usually has the power to make any decision which the original decision-maker (e.g. the local council or the PAC) could have made regarding the project, such as granting or refusing development consent. If the Court grants consent, it can attach its own conditions to the consent.

Merits appeals are not always available. For example, only certain types of development can be challenged on the merits.²⁰ Members of the public can generally only bring merits appeals against development consents if they qualify as an 'objector'. To be classed as an objector you must have written a submission objecting to the project during the formal submission period.

An incorporated association can bring a merits appeal, but only if a submission was lodged in the name of the association, making the association an objector.

You only have 28 days to file a merits appeal from the date you are notified of the decision and this includes when the decision is publicly notified in a newspaper.

Judicial review

Judicial review cases do not consider the substance of the decision. Rather, the Court has to consider whether or not the decision was lawful; that is, whether the correct legal procedure was followed. In addition to challenging development approvals, judicial review cases can also be brought to challenge decisions to make local environmental plans.

The person bringing the case has to show that some legal error was made by the decision-maker when the project was being assessed.

Some common legal errors that give rise to judicial review cases include:

- approval of a development on land where developments of that type are prohibited;
- failure to consider all the relevant factors when granting consent;
- taking into account something irrelevant when granting consent;
- the decision-maker didn't have the power to approve the development;
- the decision was affected by bias or fraud;

- failure to notify and advertise a development application properly; and
- failure to provide an environmental impact statement or a species impact statement when required.

These types of cases are of limited application because they rely on a legal error being made as well as sufficient evidence of that error. However, unlike merits appeals, they are available for all types of developments and any person can bring a judicial review case. You don't have to be an objector as you do with merits appeals.

If the Court agrees that a legal error has been made it can void the decision and it will be as though the decision was never made. The Court cannot replace the original decision with its own. However, sometimes the Court finds that there was a legal error, but that the error was not significant enough to warrant voiding the decision.

It is also important to note that, even if the Court declares the original approval to be invalid, there is usually nothing to stop the developer from reapplying for the approval. The decision-maker could then reconsider the project, this time ensuring that it follows the correct procedures.

You have 3 months to file a judicial review case from the date you are notified of the decision (this includes when the decision is publicly notified in a newspaper).

Responding to Breaches of Environmental Law

If the development goes ahead, the community can still play a role in ensuring that it is being operated lawfully. This type of legal action is known as 'civil enforcement'.

A typical matter might involve a claim that there has been a breach of an environmental or planning law. The Court will be asked to make orders to fix that breach.

Normally, responsibility for bringing these types of cases would fall to the government department (or local council) responsible for administering the law that is being breached. However, in practice, many government departments are not resourced well enough to allow them to monitor and enforce every development and prosecutions for breaches are not common.

As a result, many planning and environmental laws allow any person who believes the law is being breached to go to Court to enforce that breach and seek a remedy.²¹

If you are concerned about a breach of the Federal environmental law (that is, the *Environment Protection and Biodiversity Conservation Act 1999*), you need to first establish that you are an interested person before you can be heard in Court.²²

Upon becoming aware of a breach, you should first notify the government department or local council responsible for administering the relevant law. If the department or council chooses not to take any action, you should speak to a lawyer about your rights to do so.

The responsibility is on the person bringing the case to point to a particular environmental law which should have been complied with, and then to present evidence to show that it has not been complied with.

Typical civil enforcement proceedings might involve:

- a claim that the developer is operating outside its development consent or without development consent;²³
- a claim that the developer is not complying with its conditions of development consent;²⁴

- a claim that a developer is polluting without a required licence or in excess of what the licence allows,²⁵ or
- a claim that the developer has cleared native vegetation without a required permit, or in excess of what the permit allows.²⁶

The remedies available include:²⁷

- a declaration - a legally binding statement by the Court that a law has been breached;
- an injunction - an order to stop somebody from doing something, e.g. from carrying out further work on a site. These can be granted on a temporary or permanent basis;
- demolition or removal orders; and
- a remediation order – an order directing a person to carry out remediation work on a site, such as replanting trees or cleaning up pollution.

If a person doesn't comply with an order in time, they could be found in contempt of Court and liable for a fine, sequestration of property or even imprisonment. The penalty is up to the Court. It is important to show the Court not only the breach of the environmental law, but also the harm caused.

Most environmental laws also have criminal penalties but criminal prosecutions are usually brought by the government department responsible for that law. Members of the public can sometimes bring a criminal prosecution but these cases are more difficult to prove and the right to bring them is usually restricted.

The EDO NSW website contains a 'compliance portal' to assist you in detecting breaches of the law. The portal contains links to public registers where you can access licences and approvals as well as the conditions attached to them. For more information contact EDO NSW or [visit our website](#).²⁸

Getting legal advice

Before you take Court action, it is essential that you obtain legal advice to work out whether you have a case. It is best to get advice from a specialist environmental lawyer. EDO NSW provides free legal advice to community members and groups. You can also contact the [Law Society of NSW](#) to get a referral to private lawyers who specialise in environmental law.²⁹

You or your group may be eligible for legal aid for a public interest environmental law case. A grant of legal aid will include an indemnity, which means that Legal Aid will pay the other side's costs if you lose the case.

Get advice quickly

You should get legal advice as soon as an issue arises because delay can adversely affect Court cases. Once a decision has been made, there are strict deadlines for commencing appeals. Sometimes a delay can mean losing your case, even if your legal claim is correct. Delays can also be expensive.

Do I need to be legally represented?

If you are involved in a Court case, you have three options. You can:

- put forward your case in Court yourself;
- be represented by another person without legal qualifications, acting as your agent; or

- be represented by a solicitor or barrister.

Representation by an experienced lawyer is particularly advisable for judicial review matters. For merits appeal matters, it is quite possible to represent yourself but it usually helps to have someone assisting you with knowledge of the way the Court works. This does not necessarily have to be a lawyer. For example, in building matters an architect may sometimes represent the applicant. If you decide to proceed without legal representation, you will need to research the Court procedures.

1. For more information on Joint Regional Planning Panels, see: <http://jrpp.nsw.gov.au/>
2. *Environmental Planning and Assessment Act 1979* (NSW), s. 54.
3. *Environmental Planning and Assessment Act 1979* (NSW), s. 55.
4. *Environmental Planning and Assessment Act 1979* (NSW), s. 56.
5. See: <http://leptracking.planning.nsw.gov.au/>
6. See: http://www.edo.org.au/edonsw/site/factsh/fs02_1_1.php
7. Proposed changes to Statewide streamlined approvals code: <http://www.planning.nsw.gov.au/Development/Onexhibition/tabid/205/ctl/View/mid/1081/ID/95/language/en-US/Default.aspx>
8. *Environmental Planning and Assessment Act 1979* (NSW), s. 79.
9. *Environmental Planning and Assessment Act 1979* (NSW), ss. 89F, 115Z,
10. <http://www.environment.gov.au/epbc/notices/>
11. *Protection of the Environment Operations Act 1997* (NSW), s. 308(2)(a); <http://www.environment.nsw.gov.au/prpoeo/index.htm>
12. *Protection of the Environment Operations Act 1997* (NSW), s. 45(l).
13. <http://www.environment.nsw.gov.au/licensing/>
14. *Protection of the Environment Operations Act 1997* (NSW), s. 58.
15. See: http://www.edo.org.au/edonsw/site/pdf/factsheets/Topic9_2.pdf
16. See: http://www.edo.org.au/edonsw/site/factsh/fs10_1.php
17. For more information on Joint Regional Planning Panels, see: <http://jrpp.nsw.gov.au/>
18. See: <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/FactSheetNo16>
19. See: http://www.aph.gov.au/Parliamentary_Business/Petitions
20. Designated development can be challenged on the merits, as can State significant development (so long as it would also qualify as designated development and the PAC has not held a public hearing in relation to the development). See: *Environmental Planning and Assessment Act 1979* (NSW), s. 98.
21. *Environmental Planning and Assessment Act 1979* (NSW), s. 123; *Protection of the Environment Operations Act 1997* (NSW), ss. 252, 253; *Native Vegetation Act 2003* (NSW), s.; *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 475(1).
22. An interested person is an individual whose interests are affected, or who has been engaged in activities to protect the environment during the previous two years. It is also possible for an organisation (incorporated in Australia) to take action if the organisation's interests are affected or if, during the previous 2 years, it has had the protection of the environment as one of its objects and purposes and been engaged in environmental protection. See: *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 475(6). An individual can take action on behalf of an unincorporated association.

23. *Environmental Planning and Assessment Act 1979* (NSW), s. 76A.
24. *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(1), 80A(1).
25. *Protection of the Environment Operations Act 1997* (NSW), s. 64.
26. *Native Vegetation Act 2003* (NSW), s. 12.
27. *Land and Environment Court Act 1979* (NSW), Part 3.
28. See: www.edo.org.au/edonsw/compliance
29. See: <http://www.lawsociety.com.au/community/findingalawyer/solicitorreferralservice/>

15.0 Contacts and Resources

15.1 LEGAL ASSISTANCE

EDO NSW

Level 5, 263 Clarence Street Sydney NSW 2000

Phone: 02 9262 6989 or 1800 626 239

Fax: 02 9264 2414

Website: www.edonsw.org.au

EDO NSW (Northern Rivers Office)

Street address: 1/71 Molesworth Street Lismore NSW 2480

Postal address: PO Box 868 Lismore NSW 2480

Phone: 1300 369 791 Fax: 02 6621 3355

Website: www.edonsw.org.au

Land and Environment Court of NSW

Street address: Level 4, 225 Macquarie Street,

Windeyer Chambers Sydney NSW

Postal address: GPO Box 3565 Sydney NSW 2001

Phone: 02 9228 8388 Fax: 02 9235 3096

Website: www.lawlink.nsw.gov.au/lec

Legal Information Access Centre (LIAC)

State Library of NSW Macquarie St Sydney NSW 2000

Phone: 02 9273 1558

Fax: 02 9273 1250

Website: www.legalanswers.sl.nsw.gov.au

15.2 STATE GOVERNMENT AGENCIES

Department of Planning and Infrastructure

Head Office

Street address: 23-33 Bridge Street Sydney NSW

Postal address: GPO Box 39 Sydney NSW 2001

Phone: (02) 9228 6111 Fax: 02 9228 6455

Website: www.planning.nsw.gov.au

National Parks and Wildlife Service

Street address: Level 14, 59-61 Goulburn Street Sydney

Postal address: PO Box A290, Sydney South NSW 1232

Phone: 1300 361 967 Fax: 02 9995 5999

Email: info@environment.nsw.gov.au

Website: www.nationalparks.nsw.gov.au

Aboriginal Heritage Information Management System (AHIMS) Registrar

Street address: Level 6, 43 Bridge Street, Hurstville NSW

Postal address: PO Box 1967, Hurstville NSW 1481

Phone: (02) 9585 6345 Fax: (02) 9585 6094

Email: ahims@environment.nsw.gov.au

Website: <http://www.environment.nsw.gov.au/contact/AHIMSRegistrar.htm>

Office of Environment and Heritage

Postal address: PO Box A290 Sydney South, NSW 1232

Phone: (02) 9995 5000

Environment Line: 131 555 (for information on pesticides, pollutions, licences etc.)

Email: info@environment.nsw.gov.au

Website: www.environment.nsw.gov.au

Environment Protection Authority

Postal address: PO Box A290 Sydney South, NSW 1232.

Pollution hotline: 131555 or 02 9995 5555.

Website: <http://www.environment.nsw.gov.au/epa/index.htm>

Department of Trade and Investment

Street address: Level 47, MLC Centre, 19 Martin Place, Sydney NSW 2000

Phone: (02) 9338 6600

Website: www.trade.nsw.gov.au

Minerals and Petroleum

Postal address: NSW DPI, PO Box 344, Hunter Regional Mail Centre NSW 2310

Information line: 1300 736 122

Phone: (02) 4931 6666

Email: minres.webcoordinator@dpi.nsw.gov.au

Website: <http://www.resources.nsw.gov.au/>

Agriculture

Postal address: NSW DPI, Locked Bag 21, Orange NSW 2800

Agriculture advisory line: 1800 808 095

Email: nsw.agriculture@dpi.nsw.gov.au

Website: www.dpi.nsw.gov.au/agriculture

Fisheries

Postal address: NSW DPI, PO Box 21, Cronulla NSW 2230

Information line: 1300 550 474

Email: information-advisory@dpi.nsw.gov.au

Website: www.dpi.nsw.gov.au/fisheries

Forestry

Postal address: NSW DPI, PO Box 100, Beecroft NSW 2119

Information line: 1300 655 687

Email: cumberland@sf.nsw.gov.au

Website: <http://www.forests.nsw.gov.au/>

Game Council

Postal address: PO Box 2506, Orange NSW 2800

Phone: (02) 6360 5111

Email: info@gamecouncil.nsw.gov.au

Website: www.gamecouncil.nsw.gov.au

Crown lands management

Phone: 1300 052 637

Website: www.lpma.nsw.gov.au/

Livestock Health and Pest Authorities

Postal address: Locked Bag 21, Orange NSW 2800

Phone: (02) 6391 3242

Email: lhpa.smc@lhpa.org.au

Website: www.lhpa.org.au

Marine Parks Authority

Postal address: C/- PO Box 21, Cronulla NSW 2230

Phone: 1300 550 474

Email: executive.officer@mpa.nsw.gov.au

Website: www.mpa.nsw.gov.au

Office of Water

Postal address: GPO Box 3889, Sydney NSW 2001

Phone: 02 8281 7777

Email: information@water.nsw.gov.au

Land and Property Information

1 Prince Albert Road, Queen's Square, Sydney, NSW

GPO Box 15, Sydney, NSW, 2001

Phone: 13000 LANDS (1300 052 637)

Website: <http://www.lpi.nsw.gov.au/>

NSW Fire Brigade**Head Office**

Street address: Level 10, 227 Elizabeth Street , Sydney NSW

Postal address: PO Box A249, Sydney South NSW 1232

Phone: (02) 9265 2999

In an emergency call 000

Website: www.nswfb.nsw.gov.au

NSW Rural Fire Service**Headquarters**

Street address: 15 Carter Street, Homebush Bay NSW

Postal address: Locked Mail Bag 17 Granville NSW 2142

Phone: (02) 8741 5555 or 1800 679 737

Website: www.rfs.nsw.gov.au

Local Government and Shires Associations of NSW

Street address: Level 8, 28 Margaret Street, Sydney NSW

Postal address: GPO Box 7003 Sydney NSW 2001

Phone: (02) 9242 4000

Website: www.lgsa.org.au

NSW Environmental Trust

PO Box 644 Parramatta NSW 2124

Phone: (02) 8837 6093

Website: www.environment.nsw.gov.au/grants/envtrust.htm

15.3 COMMONWEALTH GOVERNMENT AGENCIES**Australian Government Land and Coasts Team**

GPO Box 787, Canberra, ACT, 2601

Phone: 1800 552 008 (toll-free)

Website: www.nrm.gov.au

Australian Pesticides and Veterinary Medicines Authority

18 Wormald Street, Symonston, ACT

PO Box 6182, Kingston, ACT, 2604

Phone: 02 6210 4700

Website: www.apvma.gov.au

Australian Quarantine and Inspection Service (AQIS)**NSW Regional Office**

1 Crewe Place, Rosebury, NSW

PO Box 657, Mascot NSW, 1460

Phone: 02 8334 7444

Website: <http://www.daff.gov.au/aqis>

Commonwealth Office of the Gene Technology Regulator

GPO Box 9848 (MDP 54), Canberra, ACT 2601

Freecall: 1800 181 030

Website: www.ogtr.gov.au

Department of Climate Change and Energy Efficiency

2 Constitution Avenue, Canberra, ACT, 2600

GPO Box 854, Canberra, ACT 2601

Phone: 1800 057 590

Website: <http://www.climatechange.gov.au/>

Department of Environment, Sustainability, Water, Population and Communities

John Gorton Building, King Edward Terrace, Parkes, ACT 2600

GPO Box 787, Canberra, ACT 2601

Phone: 1800 803 772

Website: <http://www.environment.gov.au/>

Department of Agriculture, Fisheries and Forestry

Street address: Edmund Barton Building, Blackall Street, Barton ACT 2601

Postal address: GPO Box 858 Canberra ACT 2601

Phone: (02) 6272 3933

Website: <http://www.daff.gov.au>

Australian Heritage Council

Street address: John Gorton Building, King Edward Terrace, Parkes, ACT

Postal address: GPO Box 787, Canberra ACT 2601

Phone: (02) 6274 1111

Website: www.ahc.gov.au

Natural Heritage Trust

GPO Box 787 Canberra ACT 2601

Phone: 1800 065 823 (toll-free)

Website: www.nht.gov.au

15.4 CATCHMENT MANAGEMENT AUTHORITIES

Border Rivers-Gwydir CMA

15 Vivian Street, Inverell, NSW

PO Box 411, Inverell, NSW 2360

Phone: 02 6728 8020

Website: www.brg.cma.nsw.gov.au

Central West CMA

30 Warne Street, Wellington, NSW

PO Box 227, Wellington, NSW 2820

Phone: 02 6840 7800

Website: www.cw.cma.nsw.gov.au

Hawkesbury-Nepean CMA

159 Auburn Street, Goulburn, NSW

Locked Bag 2048, Goulburn, NSW 2580

Phone: 02 4828 6747

Website: www.hn.cma.nsw.gov.au

Hunter-Central Rivers CMA

816 Tocal Road, Paterson, NSW

Private Bag 2010, Paterson, NSW 2421

Phone: 02 4930 1030

Website: www.hcr.cma.nsw.gov.au

Lachlan CMA

2 Sheriff Street, Forbes, NSW

PO Box 726, Forbes, NSW, 2871

Freecall: 1800 885 747

Phone: 02 6851 9500

Website: www.lachlan.cma.nsw.gov.au

Murray CMA

315 Victoria Street, Deniliquin, NSW

PO Box 835, Deniliquin, NSW 2710

Phone: 03 5880 1400

Website: www.murray.cma.nsw.gov.au

Murrumbidgee CMA

Level 1 43-45 Johnston Street, Wagga Wagga, NSW

PO Box 5224, Wagga Wagga, NSW 2650

Phone: 02 6932 3232

Website: www.murrumbidgee.cma.nsw.gov.au

Namoi CMA

35- 37 Abbott Street, Gunnedah, NSW, 2380

Phone: 02 6742 9220

Fax: 02 6742 4022

Website: www.namoi.cma.nsw.gov.au

Northern Rivers CMA

49 Victoria Street, Grafton, NSW

PO Box 618, Grafton, NSW, 2460

Phone: 02 6642 0622

Website: www.northern.cma.nsw.gov.au

Southern Rivers CMA

84 Crown Street, Wollongong East, NSW

PO Box 3095, Wollongong East, NSW, 2520

Phone: 02 4224 9700

Website: www.southern.cma.nsw.gov.au

Western CMA

62 Marshall Street, Cobar, NSW

PO Box 307, Cobar, NSW, 2835

Freecall: 1800 032 101

Phone: 02 6836 1575

Website: www.western.cma.nsw.gov.au

15.5 IRRIGATION CORPORATIONS

Coleambally Irrigation Cooperative Ltd

7 Brolga Place, Coleambally, NSW 2707

PO Box 103, Coleambally, NSW, 2707

Phone: 02 6954 4003

Emergency: 0427 277 906 or 0488 216 876

Website: [www. http://new.colyirr.com.au/](http://new.colyirr.com.au/)

Jemalong Irrigation Ltd

Lachlan Valley Way, Forbes, NSW 2871

PO Box 520, Forbes, NSW, 2871

Phone: 02 6857 4201

Website: <http://www.jemalongirrigation.com.au/>

Murray Irrigation Ltd

Deniliquin Office

443 Charlotte Street, Deniliquin, NSW 2710

Phone: 02 5898 3300

Emergency (after hours): 02 5898 3302

Finley Office

Murray Street, Finley, NSW, 2713

Phone: 03 5888 3000

Emergency (after hours): 03 5888 3002

Wakool Office

Dampier Street, Wakool, NSW, 2710

Phone: 03 5887 0500

Emergency (after hours): 03 5887 0503

All offices

PO Box 528, Deniliquin, NSW 2710

Website: <http://www.murrayirrigation.com.au/>

Murrumbidgee Irrigation Ltd

Griffith Office

Research Station Road, Griffith

PO Box 492, Griffith, NSW, 2080

Phone: 02 6962 0200

Leeton Office

Dunn Avenue, Leeton
PO Box 519, Leeton, NSW, 2705
Phone: 02 6953 0100

Website: <http://www.mirrigation.com.au/>

Western Murray Irrigation Ltd

5 Dampier Street, Dareton,
PO Box 346, Dareton, NSW, 2717
Phone: 03 5027 4953
Website: <http://www.westernmurray.com.au/>

15.6 MINE SUBSIDENCE BOARDS

Newcastle & Lake Macquarie

Ground Floor, NSW Government Offices,
117 Bull Street, Newcastle West,
PO Box 488G, Newcastle, NSW, 2300
Phone: 02 4908 4300

Picton

100 Argyle Street,
PO Box 40, NSW, 2571
Phone: 02 4677 1967

Singleton

Unit 6, 1 Pitt Street,
PO Box 524, Singleton, NSW, 2330
Phone: 02 6572 4344

Wyang

Suite 3 Feldwin Court, 30 Hely Street,
PO Box 157, Wyong, NSW, 2259
Phone: 02 4352 1646

Website: http://www.minesub.nsw.gov.au/templates/mine_subsidence_board_hp.aspx?pageID=3824

15.7 OTHER ORGANISATIONS

Australian Association of Bush Regenerators

C/- Total Environment Centre

PO Box A176, Sydney South NSW 1235

Phone: 0407 022 921

Website: www.aabr.org.au/aabr

Australian Wildlife Conservancy

PO Box 8070 Subiaco East WA 6008

Phone: 08 9380 9633

Website: <http://www.australianwildlife.org/>

Bush Heritage Australia

Level 5, 395 Collins Street, Melbourne, VIC

PO Box 329, Flinders Lane, Melbourne, VIC 8009

Phone: 1300 628 873 or 03 8610 9100

Website: www.bushheritage.org.au

Carbon Farmers of Australia

Phone: 02 6374 0329

Email: info@CarbonFarmersOfAustralia.com.au

Website: <http://www.carboncoalition.com.au/CarbonFarmers/index.html>

Community Environment Network

PO Box 149, Ourimbah, NSW 2258

Phone: 02 4349 4756

Website: <http://www.cen.org.au/>

Foundation for National Parks and Wildlife

Level 10, 52 Phillip Street, Sydney, NSW

PO Box 2666, Sydney, NSW, 2001

Phone: 02 9221 1949

Website: <http://fnpw.org.au>

Greening Australia (NSW)

142 Addison Road, Marrickville NSW, 2204

Phone: 02 9560 9144

Website: www.greeningaustralia.org.au

Greenpeace Australia

Level 2, 33 Mountain Street, Ultimo, NSW, 2007

Phone: 02 9281 6100

Freecall: 1800 815 151

Website: www.greenpeace.org/australia

Land and Environment Court

Level 4, 225 Macquarie Street, Sydney, NSW

GPO Box 3565, Sydney, NSW, 2001

Phone: 02 9113 8200

Website: www.lawlink.nsw.gov.au/lec

Landcare Australia**Head Office**

Level 1, 6 Help Street, Chatswood NSW

PO Box 5666, West Chatswood, NSW, 1515

Phone: 02 9412 1040

Website: www.landcareonline.com.au

Landcare NSW

Website: www.landcarensw.org

Nature Conservation Council

Level 2, 5 Wilson Street, Newtown NSW

PO Box 137, Newtown 2042

Phone: 02 9516 1488

website: www.nccnsw.org.au

Nature Conservation Trust**Head Office**

C/- CSU, PO Box 883, Orange, NSW, 2800

Phone: 0 2 6365 7543

Website: www.nct.org.au

National Parks Association of NSW

Level 2, 5 Wilson Street, Newtown NSW

PO Box 337 Newtown, NSW 2042

Phone: 02 9299 0000

Website: www.npansw.org.au

Natural Sequence Association

81 Heath Road, Hardys Bay, NSW, 2257

Phone: 02 4360 2188

Website: www.naturalsequenceassociation.org.au

RSPCA

201 Rookwood Road, Yagoona, NSW

PO Box 34, Yagoona, NSW 2199

Phone: 02 9770 7555

Website: www.rspcansw.org.au

Total Environment Centre

Level 4, 78 Liverpool Street, Sydney, NSW

PO Box A176 Sydney South, NSW 1235

Phone: 02 9261 3437

Website: www.tec.org.au

The Wilderness Society**Sydney Office**

Suite 402, 64-76 Kippax Street, Surry Hills, NSW

PO Box K249, Haymarket, NSW, 1240

Phone: 02 9282 9553

Website: www.wilderness.org.au

Threatened Species Network**Head Office**

Level 13, 235 Jones Street, Ultimo, NSW

PO Box 528, Sydney, NSW, 2007

Phone: 02 9281 5515

Website: <http://wwwf.org.au/ourwork/species/tsn>

World Wide Fund for Nature

Level 13, 235 Jones Street, Ultimo, NSW

GPO Box 528 Sydney NSW 2001

Phone: 02 9281 5515

Website: www.wwf.org.au

15.8 GLOSSARY

Applicant - The person seeking a consent or approval to carry out a development or project. The applicant may also be referred to as a 'proponent'. An applicant can also be the person who commences legal action.

CMA - Catchment Management Authority

Coastal wetlands - Land identified in cl. 4 of the *State Environmental Planning Policy No. 14-Coastal Wetlands* (NSW). It is a type of **environmentally sensitive area**.

Covenant - A formal agreement which is legally binding.

Critically endangered species or ecological community - A species or ecological community listed in Schedule 1A of the *Threatened Species Conservation Act 1995* (NSW). A species is eligible to be listed as a critically endangered species if, in the opinion of the Scientific Committee, it is facing an extremely high risk of extinction in New South Wales in the immediate future.

Critical habitat - Habitat declared as being critical to the survival of endangered species, populations and ecological communities, or critically endangered species and ecological communities under Part 3 of the *Threatened Species Conservation Act 1995* (NSW).

DA - Development application

EARs - Environmental Assessment Requirements issued by the Director General of Planning in relation to major projects and critical infrastructure.

Ecologically sustainable development - A set of legal principles which have to be considered by decision-makers when assessing most developments. Ecologically sustainable development is an objective of the *Environmental Planning and Assessment Act 1979* (NSW) and the *Threatened Species Conservation Act 1995* (NSW) and it is defined in s 6(2) of the *Protection of the Environment Operations Act 1991* (NSW). It includes several sub-principles, including:

- The precautionary principle
- The principles of intergenerational and intragenerational equity
- The protection of biodiversity
- The integration of economic, social and environmental considerations
- Improved valuation, pricing and incentive mechanisms

Endangered species, population or ecological community - A species, population or ecological community listed in Schedule 1 of the *Threatened Species Conservation Act 1995* (NSW). A species is eligible to be listed as an endangered species if, in the opinion of the Scientific Committee, it is facing a very high risk of extinction in New South Wales in the near future, and it is not eligible to be listed as a critically endangered species.

Environmental impact statement (EIS) - A document which is required to accompany designated development applications or activity approval applications under the *Environmental Planning and Assessment Act 1979* (NSW). It is usually prepared by a consultant on behalf of the applicant and provides a detailed analysis of the likely impacts of the development and the applicable planning and environmental laws.

Environmentally sensitive area - An area that is listed in clause 1.5 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW). Listed areas include: coastal waters, lakes and wetlands, littoral rainforests, land reserved as an aquatic reserve or marine park, land recognised as being of high Aboriginal cultural or high biodiversity significance and land which is a Ramsar or World Heritage site.

EOAM - Environmental Outcomes Assessment Methodology

EPA - Environment Protection Authority

EPA Act - *Environmental Planning and Assessment Act 1979* (NSW)

Gazette - The official publication advertising new or amending legislation.

GM - Genetically modified

GMO - Genetically modified organism

Injunction - An order that may be given by a Court to restrain a person from carrying out an action that is breaching, or may result in a breach of, the law. Injunctions can be temporary or permanent. For example, a Court may grant a temporary injunction to restrain a person before court proceedings are determined.

LEP - Local Environmental Plan

LG Act - *Local Government Act 1993* (NSW)

Littoral rainforests - 'Littoral' means 'on or near the shore' so littoral rainforests means rainforests which are located in coastal areas. The *State Environmental Planning Policy No. 26*

- *Littoral Rainforests* provides extra protections for land that contains littoral rainforest. The Department of Planning has maps that identify areas containing littoral rainforest that are protected by the SEPP.

LPHA - Livestock Pest and Health Authority

LPMA - Land and Property Management Authority

NV Act - *Native Vegetation Act 2003* (NSW)

OEH – Office of Environment and Heritage

OGTR - Office of the Gene Technology Regulator

PAC - Planning Assessment Commission

PAF Act - *Plantations and Reafforestation Act 1999* (NSW)

PAF Code - Plantations and Reafforestation Code – made under the PAF Act.

PCO - Pesticide control order

PNF - Private native forestry

Pollution licence - These are also known as ‘environment protection licences’ and are issued by the Environment Protection Authority (EPA) under the *Protection of the Environment Operations Act 1997* (NSW). They authorise and set limits on the pollution that is emitted by ‘scheduled activities’. Scheduled activities are listed in Schedule 1 of the Act.

Proponent - A person seeking to undertake a development or project. May also be known as an ‘applicant’.

PVP - Property vegetation plan

RAMAs - Routine agricultural management activities

Remedial order - An order that may be given by either a government authority or the Court requiring a person to carry out work to repair and/or rehabilitate a particular area.

RFS - Rural Fire Service

Scheduled activity - An activity that is listed in Schedule 1 to the *Protection of the Environment Operations Act 1997* (NSW). A location where a scheduled activity is being carried out is known as a 'scheduled premises'. Scheduled premises require a pollution licence to carry out the scheduled activity.

SEPP - State Environmental Planning Policy

Seven part test - The seven factors that need to be considered to determine whether a proposed development is likely to have a significant effect on threatened species, populations or ecological communities. The seven factors are listed in s. 5A of the *Environmental Planning and Assessment Act 1979* (NSW).

Species impact statement (SIS) - A SIS is usually prepared by a consultant on behalf of the proponent and outlines the likely impacts of a proposed development on threatened species, populations and ecological communities and their habitat. A SIS must be prepared when a proposed Part 4 development is likely to have a significant impact on threatened species, populations or ecological communities or their habitats.

Statement of environmental effects (SEE) - A document that is required to be submitted with a development application (unless the development application is for designated development- in which case an environmental impact statement is required instead). The SEE must include an indication of the environmental impacts that the development will have and the steps that will be taken to minimise those impacts.

Stop work order - This order can be given by a government authority to prohibit someone from carrying out an action that is, or is about to, contravene an Act. It is to be given in writing and it is an offence not to comply with the order. It is similar to an **injunction**.

Threatened species - Species listed under the *Threatened Species Conservation Act 1997* (NSW) as either critically endangered, endangered or vulnerable.

TPO - Tree preservation order

Vulnerable species - A species listed in Part 1 of Schedule 2 of the *Threatened Species Conservation Act 1997* (NSW). A species is eligible to be listed as a vulnerable species if, in the opinion of the Scientific Committee, it is facing a high risk of extinction in New South Wales in the medium-term future and it is not eligible to be listed as an endangered or critically endangered species.

Western Division - The Department of Primary Industries – [Catchments & Lands website](#) provides that the eastern boundary of the Division runs from Mungindi on the Queensland border to the Murray River near Balranald.

Wilderness area - Lands (including subterranean lands) declared to be a wilderness area under the *Wilderness Act 1987* (NSW) or reserved under the *National Parks and Wildlife Act 1974* (NSW).

WM Act - *Water Management Act 2000* (NSW)



NSW

EDO

**DEFENDING THE ENVIRONMENT
ADVANCING THE LAW**