CARING FOR THE COAST
A GUIDE TO ENVIRONMENTAL LAW
FOR COASTAL COMMUNITIES IN NSW
2ND EDITION
About EDO NSW

EDO NSW is a community legal centre that specialises in public interest environmental law.

EDO NSW is a non-profit organisation and we are independent from government. We have two offices - in Lismore and in Sydney. The Lismore office services the Northern Rivers region. The Sydney office covers the rest of the State.

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 (free call);

**Northern Rivers** 1300 369 791

EDO NSW also conducts free community workshops on a range of environmental laws, including the issues covered in this guide. Please call us or email education@edonsw.org.au if you’d like to request a workshop for your community.

For more information about EDO NSW, please visit [www.edonsw.org.au](http://www.edonsw.org.au)

Disclaimer

The information contained in this guide intended to provide general information about the law. While all care has been taken in the preparation of this guide, it is not a substitute for legal advice in individual cases.

Currency

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Introduction

The purpose of this booklet is to help you understand your legal rights and obligations as a member of a coastal community and assist you in being an informed and active participant in planning and environmental decisions.

Every effort has been made to provide information that is accurate in a straightforward way. If you have any questions about how the law applies in a given situation you should speak to a lawyer at EDO NSW.

For more information about the topics covered in this booklet, see the EDO NSW Environmental Law Fact Sheets, available on our website.¹

What is a coastal area?

This booklet deals with coastal areas. A coastal area is land next to the sea and the region adjoining it. There is no specific definition of a coastal area and each community will be different. However, in planning law the area adjoining the sea is called the coastal zone.

What is the coastal zone?

The coastal zone is shown on a series of maps. Generally, these maps show the coastal zone to extend:²

- one kilometre inland from the coast;
- one kilometre landward around any bay, estuary, coastal lake or lagoon; and
- one kilometre inland from either bank of a coastal river.

The coastal zone also includes coastal waters which generally extend up to three nautical miles from the NSW coastline.³

The coastal zone maps can be viewed during office hours at the relevant local council chambers or at the Department of Planning and Infrastructure’s head and regional offices.⁴ Maps of the metropolitan region between Newcastle City Council and Shellharbour Council (including Sydney) are available on the Department of Planning and Infrastructure’s website.

What does it mean if my land in within the coastal zone?

If land is within the coastal zone then additional laws and policies will apply to the land, including:

- The Coastal Protection Act 1979 (NSW);⁵

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¹ EDO NSW

² EDO NSW

³ EDO NSW

⁴ EDO NSW

⁵ EDO NSW
The Coastal Protection Regulation 2011 (NSW),[^6] and

State Environmental Planning Policy 71 – Coastal Protection.

[^6]: Read Chapter 2 for more information on how these planning laws and policies are applied in the coastal zone.

2. Coastal Protection Act 1979 (NSW), s. 4A.
3. Coastal Waters (State Powers) Act 1980 (Cth), s. 4(2); Coastal Protection Act 1979 (NSW), s. 4 note.
There are immense pressures on coastal communities from population growth, tourism and climate change impacts. Coastal communities are faced with the challenge of managing these pressures and balancing them with the environmental needs of coastal ecosystems. Planning law plays a key role in addressing these challenges. The information in this Part is designed to help you understand how decisions are made about the development of coastal areas.

Chapter 1 Planning law and the environment

Planning law regulates how coastal communities are developed and organised by specifying what can be built and where. Planning law also sets out the environmental assessment requirements for developments in coastal areas. The responsibility for coastal protection is generally split between the State and local governments. The Department of Planning and Infrastructure has an oversight role and the Minister or Director-General of Planning and Infrastructure often play a role in approving or refusing development applications. Local governments are responsible for zoning coastal areas and are responsible for making decisions about those developments that are not determined by the Department of Planning and Infrastructure. By being well informed and becoming actively involved in planning decisions, the community can participate in these important decisions.

1.1 The basics of planning law

The main Act that regulates planning in NSW is the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act). This Act is supported by the Environmental Planning and Assessment Regulation 2000 (NSW) (EP&A Regulation). The EP&A Act sets out the process for making key land use planning documents called Environmental Planning Instruments (EPIs).

Environmental Planning Instruments are legally binding documents and include Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPPs). These set out what sort of development can go where. There are also a wide range of non-binding policies and strategies that guide planning decisions. These include Regional Strategies and Development Control Plans.

The EP&A Act also regulates how developments are assessed and approved or refused. Different assessment procedures apply to different types of development.
**Hierarchy of the planning system**

Environmental Planning Instruments

- State Environmental Planning Policies
  - Made by the Minister for Planning and Infrastructure and developed by the Department of Planning and Infrastructure

- Local Environmental Plans
  - Made by the Minister for Planning and Infrastructure and usually developed by local council

Regional Strategies
- Developed by the Department of Planning and Infrastructure. Not binding in their own right, but implemented through LEPs.

Streams of Development Assessment

- Local Development
  - Local council is the decision-maker under Part 4 of the EP&A Act
  - Includes designated developments

- State Significant Development
  - Minister for Planning and Infrastructure is the decision-maker under Part 4, Division 4.1 of the EP&A Act

- Development proposed by Statutory Authorities
  - The authority proposing the development is also the decision-maker under Part 5 of the EP&A Act

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**What is an Environmental Planning Instrument?**

Environmental Planning Instruments (EPIs) are legally binding planning documents that control development and specify suitable land uses for particular areas. There are two types of EPIs – State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

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**How can I find out which environmental planning instruments apply to my land?**

You can obtain a certificate from your local council that sets out what EPIs apply to the land. These certificates are called ‘planning certificates’ or ‘Section 149 certificates’. You may have seen a planning certificate when you bought your property or applied for a mortgage. Although you may have previously looked at a planning certificate it is important to obtain the most up to date one you can as the planning instruments affecting your property may have changed. You can apply for a planning certificate for land that you don’t own.

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**What are Local Environmental Plans?**

LEPs are prepared by planning authorities (usually the local council) and are approved by the Minister for Planning and Infrastructure. The LEP divides land into zones and describes what types of developments are allowed and not allowed within each zone. Zones also contain objectives that indicate the principal purpose of the land. If you are unsure if you need consent to do work or development on your land you should refer to your LEP. All land, whether
privately owned, publicly owned, or leased, is subject to the planning controls set out in the LEP.

The LEP applies to the local government area so LEPs will differ between council areas. However, councils have been directed by the NSW Government to update their LEPs based on the **Standard Instrument – Principal Local Environmental Plan**. Some councils have already done so. In the future, all LEPs will be based on the Standard Instrument. The Standard Instrument is a template LEP that sets out standard zones and fills in some of the detail as to what types of development can and cannot be approved in such zones. It also has some standard clauses relating to things such as bushfire management, heritage conservation, and trees. The Standard Instrument contains some clauses that relate specifically to coastal areas and sets out guidelines for development on the coast.

The Standard Instrument can be adapted by each local council to suit local conditions but councils cannot add to the standard zones and must not remove the types of development that are allowed or prohibited under each zone.

**What are State Environmental Planning Policies?**

State Environmental Planning Policies (SEPPs) address planning issues of State significance. SEPPs are made by the Minister for Planning and Infrastructure.

Some SEPPs prohibit or restrict certain types of development in a particular area (such as **State Environmental Planning Policy 14 – Coastal Wetlands** which restricts certain types of development in or near listed coastal wetlands). Other SEPPs allow for certain types of development to occur despite restrictions in LEPs (such as the SEPP dealing with housing for seniors or people with a disability which allows the Minister for Planning and Infrastructure to approve housing developments for seniors or people with a disability on land zoned to prevent these housing developments). A SEPP usually makes the Minister for Planning and Infrastructure the decision-maker for the types of development covered by the SEPP or it may give the Minister a concurrence or veto power.

**What if there is an inconsistency between Environmental Planning Instruments?**

If there is an inconsistency between EPIs there is a general presumption that SEPPs will prevail over LEPs regardless of when the SEPP was made. Generally, when EPIs of the same kind conflict with one another; the newer EPI will prevail over the older EPI, however SEPPs can contain provisions to ensure they will prevail over other SEPPs regardless of when they were made.

**What is a Regional Strategy?**

Regional Strategies aim to bring together the goals of the various State Government Departments into one coordinated document that identifies strategic priorities that will direct land use planning regionally for the next 25 years. At the time of writing there were Regional Strategies in place for the **Central Coast**, **Lower Hunter**, **Far North Coast**, **Mid-North Coast**, **Illawarra**, **South Coast**, **Sydney-Canberra corridor**, and **Murray** regions.

Regional Strategies set out which areas are to be prioritised for population and economic growth. Each Regional Strategy contains a land use strategy planning map and a vision statement for the region.

A Regional Strategy is not an EPI. Councils are required to consider a Regional Strategy when making a LEP. A draft LEP (also known as a planning proposal) must address whether the LEP will comply with the Regional Strategy. The Minister for Planning and Infrastructure can require that
the LEP be consistent with the Regional Strategy. As a Regional Strategy identifies centres for economic and population growth, the council may be required to make its LEP consistent with these targeted growth areas.

**What is a development control plan?**

Some parts of a local government area are subject to development control plans (DCPs). DCPs contain more detailed requirements for the development that is allowed to take place under the other EPIs, particularly LEPs. DCPs set limits and standards for developments such as height, roof lines and floor space ratios.

DCPs are not legally binding but must be considered by decision-makers who are assessing development applications.

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**Chapter 2 Planning laws and policies that apply to coastal communities**

As well as the standard planning laws and policies that apply to all communities there are some additional coastal planning laws and policies applying specifically to coastal communities.

**2.1 The Coastal Protection Act 1979 (NSW)**

The **Coastal Protection Act 1979 (NSW)** does a number of important things. Firstly, it defines the boundaries of the coastal zone and provides for the preparation of Coastal Zone Management Plans by local councils. Secondly, it places additional checks on local councils when determining development applications in the coastal zone. Thirdly, it provides a means of restraining or remedying damage to the coast.

**What is a Coastal Zone Management Plan?**

A Coastal Zone Management Plan is prepared by the local council in partnership with the NSW Office of Environment and Heritage (OEH). The purpose of a Coastal Zone Management Plan is to put in place a structured plan for the protection of the beach or foreshore. The plan sets out actions that can be taken to avoid or mitigate damage that can occur to the coast during storm events that may lead to severe erosion or beach damage. The plan must address seven things:

1. how the beach environment and amenity will be protected;
2. what emergency actions are permitted during periods of beach erosion, such as an extreme storm event;
3. how to ensure continued public access to beaches, headlands and waterways;
4. the management of risks arising from coastal hazards;
5. the management of estuary health;
6. the impacts from climate change on risks arising from coastal hazards and estuary health; and
7. the maintenance and management of risks arising from coastal protections works such as increased erosion elsewhere.
Draft Coastal Zone Management Plans must be placed on public exhibition once they have been prepared by local councils, and during this time any person can make a submission about the draft plan. Although they are prepared by local councils, all Coastal Zone Management Plans must be approved by the Minister for the Environment.

Coastal Zone Management Plans are legally binding and can be enforced by the Minister for the Environment or the relevant council in the Land and Environment Court.

**Case Study: Coastal Erosion at Lake Cathie**

Lake Cathie in the Port Macquarie Hastings Council local government area was suffering serious coastal erosion. Beach access paths and storm water outlets had been destroyed. Infrastructure, such as power poles and water services, were under threat and private dwellings were at risk of losing their beach access. There had also been damage to the recreational amenity of the beach. These impacts are likely to increase given the projected impacts of climate change and sea level rise. Port Macquarie Hastings Council commissioned a coastline hazard study and has exhibited a draft Lake Cathie Coastline Management Study (2009) to assess the options and find a solution to the erosion problem at Lake Cathie. There was a strong community response and a Coastal Zone Management Plan was prepared, with community consultation. In July 2012 it was announced that the Port Macquarie-Hastings Council will move ahead with a Coastal Zone Management Plan for Lake Cathie that incorporates a revetment and beach nourishment as the key steps for protecting the area against coastal erosion.

**What additional checks and balances are placed on council decisions?**

If the Minister for the Environment issues a notice to a council about a particular development, the council is prohibited from carrying out the development or approving the development without the agreement of the Minister.

**How is damage to the coast remedied or restrained?**

The Minister for the Environment or a local council can bring proceedings in the Land and Environment Court to order the clean-up of any material that has caused damage to a beach. Other public authorities may also be able to bring proceedings. This includes proceedings for the removal of any works used to prevent beach erosion during a storm event. The Court can also order a person to rectify any damage and prevent recurrence of harm to the beach.

### 2.2 Guidelines for Preparing Coastal Zone Management Plans

The Guidelines for preparing coastal zone management plans provide guidance to local councils, consultants, and coastal communities on the preparation of Coastal Zone Management Plans. The guidelines must be followed by coastal councils when they are preparing draft Coastal Zone Management Plans. They specify the minimum requirements for draft plans, which are in addition to the requirements under the Coastal Protection Act 1979 (NSW). These additional requirements relate to:

- preparation of the plans;
- coastal risk management;
• coastal ecosystems; and

• community uses of the coastal zone.

2.3 Coastal Zone Management Guide Note – Emergency Action Subplans

This management guide note assists councils to prepare emergency action subplans. The guide provides the minimum requirements that must be addressed when preparing a Coastal Zone Management Plan and an emergency action subplan in addition to the requirements under the Coastal Protection Act 1979. These include:

• describing intended emergency actions to be carried out during periods of beach erosion, such as coastal protection works for property or asset protection;

• describing any site-specific requirements for landowner emergency coastal protection works, and

• describing the consultation carried out with the owners of land affected by a subplan.

2.4 State Environmental Planning Policies (SEPPs)

There are lots of SEPPs, some of which apply specifically to coastal areas. Others have a more general application but are particularly relevant to coastal areas. Below are some of the most significant SEPPs that apply to coastal areas.

State Environmental Planning Policy 71 – Coastal Protection

SEPP 71 – Coastal Protection applies to land within the coastal zone. If SEPP 71 applies then the decision-maker (being either the council or the Minister for Planning and Infrastructure) must consider certain matters set out in the SEPP when making a decision about a development application. The matters that a decision-maker must take into account when considering a development application in the coastal zone include:

• retaining public pedestrian access to and along the coastal foreshore;

• providing opportunities for new public access to the coastal foreshore;

• any detrimental impact a development may have on the foreshore;

• scenic qualities of the coastline;

• the conservation of threatened species, fish, and marine vegetation;

• protection of wildlife corridors; and

• the likely impact of coastal processes and coastal hazards on the development.

The decision-maker’s duty to consider or take into account those matters does not mean the development must be rejected if the development has an adverse impact on those matters; it just means that those matters must be considered before a decision is made.

SEPP 71 prevents the approval of development if, in the opinion of the decision-maker, the development will:

• obstruct or diminish public access to the coastal foreshore; or

• result in effluent discharge that negatively affects water quality; or
• involve a discharge of untreated storm water into the sea, beach, estuary, coastal lake or
creek or a similar body of water, or onto a rock platform.\textsuperscript{41}

\textbf{State Environmental Planning Policy (State and Regional Development) 2011.}

The State and Regional Development SEPP specifies what developments can be classified as
State significant development (SSD) and State signification infrastructure (SSI). SSD and SSI
are assessed by the Minister for Planning and Infrastructure, or by the Planning Assessment
Commission (PAC) under delegation from that Minister.

Certain developments, such as aquaculture, mining, and sewerage systems, that meet
specified thresholds are classified as SSD.\textsuperscript{42} Development on identified sites, such as the
Sydney Opera House and Barrangaroo are also classified as SSD.\textsuperscript{43}

Similarly, certain development, such as water storage and treatment facilities, port facilities,
and pipelines are classified as SSI.\textsuperscript{44} SSI can also be development that on specified land.\textsuperscript{45}

Many coastal developments qualify as SSD and SSI and this has implications for how those
developments are assessed and the opportunities for public participation in the decision-
making process. Even if a development does not qualify as SSD or SSI under this SEPP, the
Minister for Planning and Infrastructure can ‘call it in’ for assessment as either SSD or SSI if he
or she believes it is of State or regional planning significance. The Minister first has to obtain
and made publicly available advice from the Planning Assessment Commission about the State
or regional planning significance of the development.\textsuperscript{46}

The State and Regional Development SEPP will eventually replace the \textit{State Environmental
Planning Policy (Major Development) 2005} which identifies the types of developments which
are considered to be major projects and assessable under Part 3A of the \textit{Environmental
Planning and Assessment Act}. Part 3A has been removed from the Act, but still applies to
projects that were approved under that Part or which were being assessed under that Part at
the time it was repealed.

\textbf{State Environmental Planning Policy (Infrastructure) 2007}

The Infrastructure SEPP deals with a wide range of State infrastructure projects, such as
telecommunications facilities, sewerage works and stormwater management works. It specifies
when development consent is (and is not) required for such development to be carried out in
certain zones. Infrastructure may also be named in the State and Regional Development
SEPP, discussed above.

\textbf{State Environmental Planning Policy 14 – Coastal Wetlands}

The Coastal Wetlands SEPP aims to protect and preserve coastal wetlands. Around 7 per cent
of coastal wetlands in NSW are listed under SEPP 14. If a person wants to clear land, construct
a levee, drain land or fill land that is part of a SEPP 14 wetland they will need consent from the
council.\textsuperscript{47} Works in a SEPP 14 wetland are considered to be ‘designated development’ and will
require an Environmental Impact Statement to be lodged with the development application.\textsuperscript{48}
The public also has a right to comment on designated development applications.\textsuperscript{49}

The Department of Planning and Infrastructure has maps that show the locations of SEPP 14
coastal wetlands.\textsuperscript{50}
State Environmental Planning Policy 26 – Littoral Rainforests

A littoral rainforest is a particular type of rainforest which is adapted to withstand coastal conditions involving harsh, salty, drying winds. SEPP 26 aims to protect littoral rainforests. Development or works within a littoral rainforest are deemed to be ‘designated development’ and any development consent issued by council will require the agreement of the Minister for Planning and Infrastructure. The public has a right to comment on designated development applications.

The Department of Planning and Infrastructure has maps that show the locations of littoral rainforests covered by SEPP 26.

State Environmental Planning Policy 62 – Sustainable Aquaculture

The Sustainable Aquaculture SEPP establishes what types of aquaculture are allowed and the minimum performance criteria for those aquaculture activities. Aquaculture is defined in the SEPP as ‘cultivating fish or marine vegetation for the purposes of harvesting and selling them’ and ‘keeping fish in a confined area for a commercial purpose’. Aquaculture also requires a permit from the NSW Department of Primary Industries. The SEPP only applies to certain local government areas.

State Environmental Planning Policy 50 - Canal Estate Development

Canal estate developments are prohibited by SEPP 50. A canal estate development is a development that incorporates a canal that is interconnected with a natural waterway or groundwater. This SEPP applies to the whole State except for certain areas in Penrith.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

This SEPP regulates and provides design standards for seniors living developments. The SEPP allows the Minister for Planning and Infrastructure to approve housing developments for seniors or people with a disability on land zoned to prevent such housing development. A development for seniors or people with a disability must comply with the minimum requirements set out in the SEPP. The SEPP applies to land zoned in a LEP as an urban area or land adjoining land zoned as an urban area.

1. To find out more about the review, please visit [http://planningreview.nsw.gov.au/](http://planningreview.nsw.gov.au/).
2. EDO NSW will prepare online Fact Sheets to explain the new planning framework once it is introduced. Fact Sheets are available here: [http://www.edo.org.au/edonsw/site/factsheets.php](http://www.edo.org.au/edonsw/site/factsheets.php).
3. The Federal Government also has responsibility for some aspects of the coastal environment, for example, Ramsar wetlands, World Heritage Areas, Federally listed threatened species, Commonwealth marine areas, the marine environment and migratory species. See Environment Protection and Biodiversity Conservation Act 1999 (Cth), ss. 12, 15B, 16, 18, 20, 21, 23, 24B.
4. Coastal Protection Act 1979 (NSW) s. 38, State Environmental Planning Policy 71 – Coastal Protection cl. 11.
7. Section 149 Certificates are issued under section 149 of the *Environmental Planning and Assessment Act 1979* (NSW).


11. *Environmental Planning and Assessment Act 1979* (NSW), s. 36(1)(a).

12. *Environmental Planning and Assessment Act 1979* (NSW), s. 36(1)(c).


14. To access the Regional Strategy for your area, contact your local council, the Department of Planning or go to http://www.planning.nsw.gov.au/PlansforAction/Regionalplanning/tabid/161/Default.aspx

15. *Environmental Planning and Assessment Act 1979* (NSW), s. 55(2)(c).


17. *Environmental Planning and Assessment Act 1979* (NSW), s. 79C(1)(a)(iii).

18. A council may choose to prepare a coastal zone management plan or it may be directed to do so by the Minister for the Environment. See: *Coastal Protection Act 1979* (NSW), s. 55B.

19. *Coastal Protection Act 1979* (NSW), s. 55C.

20. *Coastal Protection Act 1979* (NSW), ss. 55E, 55F.

21. *Coastal Protection Act 1979* (NSW), s. 55G.

22. *Coastal Protection Act 1979* (NSW), ss. 55K, 55L.


24. *Coastal Protection Act 1979* (NSW), s. 38.

25. *Coastal Protection Act 1979* (NSW), s. 55ZA; *Allocation of the Administration of Acts*


27. *Coastal Protection Act 1979* (NSW), s. 56A.

28. *Coastal Protection Act 1979* (NSW), s. 56A.


34. *Coastal zone management guide note - Emergency action subplans 2011*, s. 6.3.
35. Coastal zone management guide note - Emergency action subplans 2011, s. 6.4.
36. Coastal zone management guide note - Emergency action subplans 2011, s. 3.
37. See Introduction for a definition of the coastal zone.
38. State Environmental Planning Policy 71 - Coastal Protection, cl. 8.
40. State Environmental Planning Policy 71 - Coastal Protection, cl. 15.
41. State Environmental Planning Policy 71 - Coastal Protection, cl. 16.
42. State Environmental Planning Policy (State and Regional Development) 2011, Sch. 1.
43. State Environmental Planning Policy (State and Regional Development) 2011, Sch. 2.
44. State Environmental Planning Policy (State and Regional Development) 2011, Sch. 3.
45. State Environmental Planning Policy (State and Regional Development) 2011, Sch. 4.
46. Environmental Planning and Assessment Act 1979 (NSW), s. 89C.
47. State Environmental Planning Policy 14 – Coastal Wetlands, cls. 7, 8.
48. State Environmental Planning Policy 14 – Coastal Wetlands, cl. 7(3). See Chapter 5 for more information on designated development and Environmental Impact Statements.
49. Environmental Planning and Assessment Act 1979 (NSW), s. 79.
52. State Environmental Planning Policy 26 – Littoral Rainforests, cl. 7(4), Environmental Planning and Assessment Act 1979 (NSW), s. 91A.
53. Environmental Planning and Assessment Act 1979 (NSW), s. 79.
55. State Environmental Planning Policy 62 – Sustainable Aquaculture, cls. 7(2), 8(2), 11.
56. State Environmental Planning Policy 62 – Sustainable Aquaculture, cl. 4.
57. Fisheries Management Act 1994 (NSW), s. 144.
58. See State Environmental Planning Policy 62 – Sustainable Aquaculture, Sch. 1 and 2.
59. State Environmental Planning Policy 50 – Canal Estate Development, cl. 3.
60. State Environmental Planning Policy 50 – Canal Estate Development, cl. 4.
61. State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, cl. 5 and 15.
62. Some local government areas are excluded from the operation of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, cl. 4.
There are procedures that must be followed by a decision-maker when deciding whether to approve a development. These procedures relate to development assessment and include:

- whether the development needs to be advertised to the community;
- what sort of environmental impact assessment needs to take place (if any);
- whether the community has the right to comment on the development application; and
- whether the community has the right to appeal a decision to approve the application.

The procedures depend on the type of development proposed. 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:

- State significant development (SSD) and State significant infrastructure (SSI) – these are projects that are considered to be of State or regional significance and are assessed by the Department of Planning and Infrastructure. The Minister for Planning and Infrastructure is the decision-maker unless that power is delegated to the Department or the Planning Assessment Commission.

- Designated development – these are deemed to be high impact developments. The local council assesses the project and is the decision-maker unless there is a Joint Regional Planning Panel convened to decide such developments.

- Local development – these are generally low impact developments such as houses with a sub-category known as exempt and complying development. The local council or a private certifier will assess and approve these sorts of developments. Exempt development does not need consent at all, and complying development just needs to meet set parameters in order to be approved.

- Part 5 assessments – these projects do not need development consent, but will still need to undergo an environmental assessment.

The different types of development assessment are explained in more detail in the following chapters.

Chapter 3 State significant development (SSD) and State significant infrastructure (SSI)

Developments that qualify as State significant development are often large projects such as coal mines, coal seam gas production, large wharf facilities, or tourist facilities which are proposed in a sensitive coastal location. Most categories of SSD contain a number of requirements and
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thresholds that must be met before the project can be classified as SSD. For example, some developments must satisfy a minimum capital investment value or employ a minimum number of people. If the project does not meet the threshold requirements, it will not be assessed as SSD.

The Minister for Planning and Infrastructure also has the power to ‘call in’ a project as SSD by publishing an order in the Government Gazette to that effect. To do this, the Minister must form the opinion that the development is of State or regional planning significance, and the PAC must make a recommendation to the Minister that the project be assessed as SSD.

State significant infrastructure projects are generally large Government projects such as roads, pipelines, and desalination plants. Some developments can be declared to be SSI because they are to be carried out by a public authority. Such developments would not normally need consent because the body carrying out the development (the proponent) is also the consent authority. However, if the proponent thinks the development requires an environmental impact statement, the development will be deemed to be SSI. These tend to be large-scale public infrastructure projects carried out by a State agency such as the Roads and Traffic Authority or Sydney Water. There are different types of SSI. Critical SSI and Staged SSI are dealt with in more detail below.

Unlike with SSD, a PAC recommendation is not required in order for the Minister to declare a development to be SSI.

At the time of writing, the Minister for Planning and Infrastructure had delegated the decision-making power to the Department of Planning and Infrastructure for ‘non-controversial’ SSD and SSI applications, and the Planning Assessment Commission for ‘controversial’ SSD and SSI applications.

The Planning Assessment Commission (PAC)

The Planning Assessment Commission (PAC) is a planning body whose members are appointed by the Minister for Planning and Infrastructure. The PAC is independent and is not subject to the direction or control of the Minister (except in relation to procedure).

The PAC consists of a Chair and eight members. For each matter the PAC has to deal with, the Chair nominates the PAC members who will make up the PAC for that matter. It is common for three members to form the PAC for any given matter. Each PAC member must have expertise in one or more of the following fields: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.
How does a development become a major project?

1. Applicant applies for the environmental assessment requirements
The applicant starts the process by lodging an online request for the Environmental Assessment Requirements (EARs). The EARs set out what the applicant needs to cover in their environmental impact assessment such as groundwater and surface water studies, and biodiversity impact studies.

At this stage, the Department of Planning and Infrastructure must make a decision as to whether the proposed development qualifies as SSD. If it does, the EARs will be issued. If it does not, the EARs will not be issued and the development will most likely be assessed by the local council or Joint Regional Planning Panel as designated development. See below for more information on designated development.

2. Director-General sets environmental assessment requirements
EARs are sometimes referred to as Director-General’s Requirements (DGRs).

In preparing the DGRs, the Director-General of Planning and Infrastructure must consult with relevant public authorities such as the Office of Environment and Heritage and the local council in the area where the project is to take place, to ensure that all key issues are identified and assessed.

The Director-General has a maximum of 28 days to issue the DGRs which will be placed on the Department of Planning and Infrastructure’s website within 5 days of issue. Those Government agencies that are consulted by the Director-General have 14 days to provide their recommended requirements.

The DGRs will remain valid for 2 years, after which time the applicant will need to consult...
further with the Director-General. In some circumstances, the Director-General can waive the requirement for an application for DGRs. If the requirement for DGRs is waived the applicant will still need to prepare an environmental impact statement (EIS) that meets the legal requirements (see below).

### 3. Applicant prepares an Environmental Impact Statement

The applicant must then prepare an environmental impact statement (EIS) that meets the environmental assessment requirements that have been set by the Director-General. In practice, this role is performed by an environmental consultant and paid for by the applicant.

In addition to addressing the DGRs, an EIS must also include the following:

- 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 applicant often consults with local council, Government agencies and the community when preparing the EIS.

### 4. Applicant lodges a project application

Once the applicant has completed the EIS, this is sent to the Director-General of Planning and Infrastructure, together with a development application.

The Department of Planning and Infrastructure can reject the application within 14 days of receiving it if it is illegible, unclear, or incomplete. Otherwise, the Department will place the application on public exhibition.

### 5. The application goes on public exhibition

The minimum exhibition period for SSD is 30 days. The development application and EIS are exhibited on the [Department of Planning and Infrastructure's website](https://www.planning.qld.gov.au).

Public notice of the application must be published in a local newspaper and on the website of the Department of Planning and Infrastructure. A copy of the notice must also be given to people owning or occupying adjoining land, detailing the proposed development and the submission period.
6. The public can make submissions

During this exhibition period, any person can make a written submission to the Director-General of Planning and Infrastructure about the project. It is important for objectors to make written submissions on time as this preserves any objector appeal rights later on. See our Fact Sheets for information on writing submissions and objector appeals (also known as merit appeals).

The Director-General must then either pass the submissions or a summary of them to the applicant. The submissions will also be made available on the Department’s website within 10 days of the submission period closing.

The Director-General may decide to ask the applicant to respond to any issues raised in the submissions. If a response is required, the applicant will usually have 21 days to lodge a response. This response will also be placed on the Department’s website.

If the applicant proposes minor changes, the Department will take steps to finalise the assessment. If the changes are deemed to be significant, the amended development application and EIS will be placed on public exhibition again for further public comment.

7. Decision

The Minister for Planning and Infrastructure is the decision-maker for all SSD projects. 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.

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

- 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, and these conditions are legally binding. Conditions are designed to minimise the adverse impacts of the development. In practice, standard conditions are often attached.

Landholder’s consent

SSD projects are often proposed over land that is privately owned. Where this is the case, landholder consent is usually required before the project can go ahead, however landholder consent is not required for some projects, for example, where the application relates to a mine or CSG development.

Does my local environmental plan apply?

Where an EPI such as a LEP wholly prohibits a type of development in a zone or over particular land, the Minister for Planning and Infrastructure cannot grant consent to that development. Where an EPI only partly prohibits the development, consent can be granted.

To get around this, a development application for SSD that is wholly prohibited by an EPI can be accompanied by a proposal to change the EPI so that the activity can go ahead. The Director-General of Planning and Infrastructure can also propose changes to a LEP for the purposes of facilitating otherwise prohibited SSD.

Where a LEP needs to be changed to facilitate SSD, only the Planning Assessment Commission (PAC) can approve the amendment. Furthermore, only the PAC can determine a development application for SSD that requires an amendment to a LEP.

Amendments to LEPs (in the form of planning proposals) go on public exhibition and you will have an opportunity to comment on the amendment. To find out when LEPs are on public exhibition, visit the Department of Planning and Infrastructure’s LEP Tracker or sign up to receive EDO NSW’s e-bulletin.

Are any other environmental approvals necessary?

A project often needs a number of approvals in addition to development consent. These approvals are often granted by other Government agencies such as the Office of Environment and Heritage (OEH), the Environment Protection Authority (EPA) or the Office of Water. For example, a proposal to build a power station might also require a licence to pollute from the EPA and approval to access and take water from the Office of Water. Many developments require a permit to clear native vegetation or to harm threatened species from OEH.

With SSD, many of these additional approvals are either unnecessary or subject to a requirement that the approval must be given consistently with the development consent, meaning the other Government agency has no discretion to refuse the approval if it is necessary to carry out SSD.

The following authorisations are not required for SSD:

• an Aboriginal heritage impact permit;
• a permit to clear native vegetation or State protected land;
• a bush fire safety authority;
Can the project be changed?
Consent to undertake SSD can be modified which means the applicant can seek to alter the project in some way after consent has been granted.

The applicant has to apply for a modification to the same consent authority that made the original decision.

Modifications can only be granted in certain circumstances, namely:

- if, in the opinion of the consent authority, the modification would have minimal environmental impact;
- if the modification would still result in substantially the same development as was originally approved; or
- to correct a minor error, misdescription or miscalculation.

Whether or not the modification application will be publicly exhibited and opened up for public comment will depend on the modification.

Modifications involving the correction of minor errors do not need to be publicly notified and there will be no opportunity for the public to comment. Modifications that will only have a minimal environmental impact may need to be notified if a Development Control Plan applying to the land requires it to be.

Other modifications are required to be notified for at least 14 days in the same manner as the original application was notified.

How is a SSI application processed?
The assessment process for SSI is similar to the process for SSD, but with some important differences.

1. Application
The applicant for the project must submit an application that describes the infrastructure project to the Director-General of Planning and Infrastructure.

2. Director-General sets the environmental assessment requirements
The Director-General of Planning and Infrastructure will then prepare site-specific environmental assessment requirements (DGRs) which the applicant must address in an environmental impact statement (EIS). In preparing the DGRs, the Director-General must consult with relevant public authorities such as the Office of Environment and Heritage (OEH). Importantly, the Director-General can modify these requirements at a later date, simply by providing written notice of the modifications to the proponent.

3. Applicant prepares an environmental impact statement
The applicant then prepares and submits an EIS to the Director-General. The Director-General can ask the applicant to revise the EIS to address certain matters.

4. Public exhibition and submissions
Once the Director-General is satisfied with the EIS, it will be placed on public exhibition for a
minimum of 30 days.\textsuperscript{72} During this exhibition period, any person or public authority may comment on the EIS.\textsuperscript{73} The Director-General must then provide either the submissions or a report on the issues raised by the submissions to the applicant and any other public authority that the Director-General considers appropriate, including the Office of Environment and Heritage and the Environment Protection Authority if the SSI will require an environment protection licence (licence to pollute).\textsuperscript{74}

The Director-General may require the applicant to respond to the issues raised in the submissions and/or lodge a ‘preferred infrastructure report’ that outlines any proposed changes to the development to minimise its environmental impact or to deal with any other issue raised.\textsuperscript{75}

If the Director-General believes that these proposed changes to the SSI proposal are significant, he or she may make the preferred infrastructure report available to the public, but this is discretionary.\textsuperscript{76}

\textbf{5. Decision}

The Minister for Planning and Infrastructure is the decision-maker for all SSI projects.\textsuperscript{77} The Director-General is required to prepare an environmental assessment report which must be considered by the Minister during the decision-making process.\textsuperscript{78} The report must include:\textsuperscript{79}

- a copy of the applicant’s environmental impact statement and any preferred infrastructure report;
- any advice provided by public authorities on the State significant infrastructure;
- a copy of any report or advice of the Planning Assessment Commission; and
- any environmental assessment undertaken by the Director-General or other matter the Director-General considers appropriate.

In addition to the Director-General’s report, the Minister must also consider:\textsuperscript{80}

- any advice provided by the Minister having responsibility for the applicant (if the applicant is a public authority); and
- any findings or recommendations of the Planning Assessment Commission following a review in respect of the proposed infrastructure project.

The Minister may then decide whether or not to approve the project. The Minister can approve the project with modifications, and can grant an approval subject to any conditions that the Minister thinks fit.\textsuperscript{81}

For example, the Minister can make it a condition of consent that the proponent acquires BioBanking credits to offset the impacts of the project on biodiversity.\textsuperscript{83}

\textit{Landholder’s consent}

SSI projects are often proposed over land that is privately owned. Where this is the case, landholder consent is required before the project can go ahead unless:\textsuperscript{83}

- the application is made by a public authority;
- it is a critical SSI project. (For more detail about CSSI, see below); or
- the SSI relates to linear transport or utility infrastructure.
If landholder consent is not required, the applicant must still notify the landholder of the proposal in writing no later than fourteen days after lodging the SSI application, or by an advertisement published in a newspaper circulating in the area in which the SSI is to be carried out at least fourteen days before the environmental impact statement relating to the SSI is placed on public exhibition.  

**Does my local environmental plan apply?**

Local environmental plans (LEPs) and State Environmental Planning Policies (SEPPs) do not apply to SSI except in very limited circumstances such as where they apply to the declaration of infrastructure as SSI or as CSSI.

**Are any other environmental approvals necessary?**

As with SSD, SSI projects do not require a range of additional authorisations that would ordinarily be needed before the project could proceed. For example, they do not require:

- an Aboriginal heritage impact permit;
- a permit to clear native vegetation;
- a bush fire safety authority; or
- a water use approval.

In addition, where consent has been granted for a SSI development, a number of additional approvals **must** be granted if they are necessary for carrying out the approved SSI, including:

- an aquaculture permit;
- a mining lease;
- a petroleum production lease;
- an environment protection licence (which is a licence to pollute); and
- a pipeline licence.

This means that once the Minister for Planning and Infrastructure approves a SSI project there is very little that other public authorities (such as the EPA) can do to prevent the project from being carried out.

SSI developments are not subject to the usual range of orders which can be used by public authorities to enforce other environmental laws. For example, interim protection orders and stop work orders to protect threatened species, and environment protection notices to reduce pollution, cannot be issued against a critical infrastructure project.

**Staged Infrastructure**

Staged Infrastructure refers to an application for SSI that sets out a concept proposal for the proposed infrastructure. The overall concept can be approved up front, with separate project approvals required as each stage of the project is implemented.

This means the Minister has the power to consider applications that only have detailed proposals for the first stage of the development.
However, the granting of an approval for the first stage of development does not authorise the development of further stages unless subsequent, detailed applications have been submitted for the Minister’s approval.\textsuperscript{92}

\textbf{Critical State Significant Infrastructure}

Any SSI application can also be declared to be Critical State significant infrastructure (CSSI) if the Minister for Planning and Infrastructure believes the infrastructure is essential for the State for economic, environmental or social reasons.\textsuperscript{92} There are currently two main categories of CSSI – projects forming part of the Pacific Highway upgrade, and rail infrastructure projects.\textsuperscript{94}

\textbf{Landholder consent not required}

Unlike most other forms of development, an application for a CSSI project can be lodged over privately owned land without the consent of landowners.\textsuperscript{95}

\textbf{Exemption from other environmental laws}

As with SSI, CSSI developments do not require a range of additional environmental approvals,\textsuperscript{96} while other approvals must be granted consistently with the CSSI approval.\textsuperscript{97} See above for more information.

\textbf{What about Part 3A developments?}

Part 3A of the EP&A Act was the previous method of assessing SSD and SSI projects – which were called major projects. Part 3A was repealed in 2011, however some projects that had been approved or applications that had been lodged before the repeal continue to be assessed as Part 3A projects.\textsuperscript{98}

\begin{quote}
\textbf{Obligations to disclose political donations}

There is an obligation for anyone who has a financial interest in a development application, rezoning application or modification application to disclose any political donations they made to either a Minister, Councillor or council employee within the previous two years or before the application is decided.\textsuperscript{99} Donations made to a political party, elected member, group or candidate must also be reported with the application.\textsuperscript{100} Any gift with a value of $1,000 or greater must be reported.\textsuperscript{101} This amount includes the combined value of a number of smaller gifts.\textsuperscript{102} The disclosure must accompany the development application or, if the donation was made after the development application was lodged, the disclosure must be made within 7 days of the donation being received.\textsuperscript{103}
\end{quote}

\textbf{Chapter 4 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.\textsuperscript{104}

Local councils are responsible for assessing designated development but this role can also rest with a Joint Regional Planning Panel\textsuperscript{105} which is an independent planning body set up by the Minister for Planning and Infrastructure in certain areas.\textsuperscript{106}
**What types of projects qualify as designated development?**

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. 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.

**How is a designated development application processed?**

1. **Applicant lodges a development application and EIS**

   The process is started when the applicant lodges a development application which must be accompanied by an environmental impact statement (EIS). The EIS is usually prepared by an environmental consultant on behalf of the applicant.

   An EIS enables the decision-maker to understand the likely environmental, social and economic impacts of the proposal before deciding whether or not to grant consent.

   The EIS must include the following:

   - a summary of the environmental impact statement;
   - a statement of the objectives of the development;
   - an analysis of any feasible alternatives to the carrying out of 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.

   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).

   In deciding whether there is likely to be a significant impact on threatened species, the applicant must apply a ‘7-part test’. 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.

2. **Application goes on public exhibition**

   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.
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;\(^{115}\)
- exhibiting a notice on the land to which the application relates;\(^{116}\)
- giving written notice to any other public authorities which may be interested in the application;\(^{117}\) and
- giving written notice to:\(^{118}\)
  - 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.\(^{119}\)

### 3. Decision

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:\(^{120}\)

- 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.\(^{121}\) 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.\(^{122}\) 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.\(^{123}\)
Does my local environmental plan apply?
Designated development can only take place on land where it is permitted by the local environmental plan (LEP), unless a State Environmental Planning Policy overrides the LEP.

Are any other environmental approvals necessary?
In addition to development consent, a number of other environmental approvals may be necessary, including:

- an environment protection licence (licence to pollute) from the Environment Protection Authority;¹²⁴
- a permit to clear native vegetation from the Catchment Management Authority;¹²⁵
- a mining lease from the Minister for Resources and Energy;¹²⁶
- a petroleum production lease from the Minister for Resources and Energy;¹²⁷ or
- an aquifer interference approval, a water use approval and/or a water access licence from the Office of Water.¹²⁸

Can the project be changed?
Designated developments can be modified which means the applicant can seek to alter the project in some way after consent has been granted.

The applicant has to apply for a modification to the same consent authority that made the original decision.

Modifications can only be granted in certain circumstances, namely:¹²⁹

- if, in the opinion of the consent authority, the modification would have minimal environmental impact;¹³⁰
- if the modification would still result in substantially the same development as was originally approved; or
- to correct a minor error, misdescription or miscalculation.

Whether or not the modification application will be publicly exhibited and opened up for public comment will depend on the modification.

Modifications involving the correction of minor errors do not need to be publicly notified and there will be no opportunity for the public to comment.¹³¹

Modifications that will only have a minimal environmental impact may need to be notified if a Development Control Plan applying to the land requires it to be.¹³²

Other modifications are required to be notified for at least 14 days in the same manner as the original application was notified.¹³³
Chapter 5 Local development

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. This means the public may or may not have a chance to comment on the application.

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.

**What is exempt and complying development?**

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

**What is exempt development?**

Exempt development is development that is considered to have a low environmental impact. 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.

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

**What is complying development?**

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*.

A very simple assessment process is followed and a certificate can be issued by either a council or an accredited certifier. 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.

**What is integrated development?**

Integrated development is a type of development that needs extra approvals from other public authorities, such as an environment protection licence from the Environment Protection Authority to authorise pollution or a permit to destroy marine vegetation.
**What is advertised development?**
Advertised development is development that needs to be publicly notified in accordance with the relevant Development Control Plan. 

**What environmental assessment takes place for local development?**
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.

**Chapter 6 Part 5 assessments**
In some cases, a proposed development will not need development consent. 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.

**What sort of environmental assessment happens under Part 5?**
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. 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.

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.

**Chapter 7 Coastal Development under Federal law**
The Federal Minister for the Environment has the power to regulate and assess coastal developments that are likely to have a significant effect on one or more of the following:

- A World Heritage site;
- A Natural Heritage place;
• A Ramsar wetland;
• Nationally listed threatened species or ecological communities;
• Listed migratory species;
• Nuclear activities (including uranium mines); and
• Commonwealth marine areas.

The seven matters listed above are known as ‘triggers’. Although there is no direct trigger for coastal developments, a proposed coastal development may have a significant effect on one of the ‘triggers’ above and will require approval from the Federal Minister for the Environment before it can go ahead. This is in addition to the assessment process that happens at the State or local level.

Before the Federal Minister for the Environment can assess the application, it must be placed on public exhibition and be open for public comment for 10 days. You can view projects that have been referred for Commonwealth assessment on the Department of Sustainability, Environment, Water, Population and Communities website.

1. To find out more about the review, please visit http://planningreview.nsw.gov.au/.
2. EDO NSW will prepare online Fact Sheets to explain the new planning framework once it is introduced. Fact Sheets are available here: http://www.edo.org.au/edonsw/site/factsheets.php.
4. 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.
5. They are assessed under Part 4 of the Environmental Planning and Assessment Act 1979 (NSW). Designated developments are listed in the Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 3.
6. For more information on JRPPs, see: http://jrpp.nsw.gov.au/
7. 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.
8. They are assessed under Part 5 of the Environmental Planning and Assessment Act 1979 (NSW), which contains general environmental assessment requirements that apply to developments that do not need consent.
9. State Environmental Planning Policy (State and Regional Development) 2011, Sch. 1.
10. Environmental Planning and Assessment Act 1979 (NSW), s. 115U.
11. Environmental Planning and Assessment Act 1979 (NSW), s. 89C.
12. State Environmental Planning Policy (State and Regional Development) 2011, Sch. 3.
13. Environmental Planning and Assessment Act 1979 (NSW), s. 115U(3). See also SEPP (State and Regional Development) 2011, Sch. 3.
14. Environmental Planning and Assessment Act 1979 (NSW), s. 115V(3).
15. **Environmental Planning and Assessment Act 1979 (NSW), s. 115U.**

16. **Environmental Planning and Assessment Act 1979 (NSW), s. 115U.**

17. Non-controversial applications are those that have received less than 25 objections and have local council support. Controversial applications are those that have received more than 25 objections, or where the local council has objected, or where there is a reportable political donation in connection with the application. For more information, see: [http://www.planning.nsw.gov.au/Development/Delegateddecisions/tabid/514/language/en-AU/Default.aspx](http://www.planning.nsw.gov.au/Development/Delegateddecisions/tabid/514/language/en-AU/Default.aspx).

18. **Environmental Planning and Assessment Act 1979 (NSW), s. 23B(3).**


20. **Environmental Planning and Assessment Act 1979 (NSW), Sch. 3, Part 2.**


22. **Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 2, cl. 3.**

23. **Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 2, cl. 3(4).**


25. **Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 2, cl. 3.**

26. However, the DGRs cannot be waived if the SSD is on land that is part of a critical habitat, or if the SSD is likely to significantly affect threatened species, populations or ecological communities, or their habitats. The Director-General also cannot waive the requirement for DGRs if specific authorisations are required under other Acts, such as a mining lease under the **Mining Act 1991 (NSW)**. See **Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 2, cl. 3.**

27. **Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 2, cl. 7.**

28. **Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 1.**

29. **Environmental Planning and Assessment Regulation 2000 (NSW), cl. 51.**

30. **Environmental Planning and Assessment Regulation 2000 (NSW), cl. 83.**


32. **Environmental Planning and Assessment Regulation 2000 (NSW), cl. 84.**

33. **Environmental Planning and Assessment Regulation 2000 (NSW), cl. 84(2).**


36. **Environmental Planning and Assessment Act 1979 (NSW), s. 89F(3).**


38. **Environmental Planning and Assessment Regulation 2000 (NSW), cl. 85A.**

39. Unless the Director-General sets a different time.

40. **Environmental Planning and Assessment Act 1979 (NSW), s. 89D.**

41. **Environmental Planning and Assessment Act 1979 (NSW), s. 23.**

42. **Environmental Planning and Assessment Act 1979 (NSW), s. 79C.**

43. **Environmental Planning and Assessment Act 1979 (NSW), s. 89E(1)(a).**

44. **Petroleum (Onshore) Act 1992 (NSW), s. 64.**
45. *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(2).

46. *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(3).

47. *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(5).

48. *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(5).

49. *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(6).

50. *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(6).

51. For more information on commenting on LEPs, see the EDO fact sheet on the ‘Gateway Process’ here: [http://www.edo.org.au/edonsw/site/factsh/fs02_1_3a.php](http://www.edo.org.au/edonsw/site/factsh/fs02_1_3a.php).


54. *Environmental Planning and Assessment Act 1979* (NSW), s. 89J.

55. Under the *National Parks and Wildlife Act 1974* (NSW), s. 90.

56. Under the *Native Vegetation Act 2003* (NSW), s. 12.

57. Under the *Rural Fires Act 1997* (NSW), s. 100B.

58. Under the *Water Management Act 2000* (NSW), s. 89.

59. Under the *Water Management Act 2000* (NSW), s. 90.

60. Under the *Water Management Act 2000* (NSW), s. 91.

61. *Environmental Planning and Assessment Act 1979* (NSW), s. 96.

62. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 117.

63. *Environmental Planning and Assessment Act 1979* (NSW), ss. 96(1), (1A); *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 119(1).

64. *Environmental Planning and Assessment Act 1979* (NSW), s. 96 (1A); *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 117.

65. *Environmental Planning and Assessment Act 1979* (NSW), s. 96 (2); *Environmental Planning and Assessment Regulation 2000* (NSW), cls. 119(1), (2).

66. *Environmental Planning and Assessment Act 1979* (NSW), s. 115X.

67. *Environmental Planning and Assessment Act 1979* (NSW), s. 115Y.

68. *Environmental Planning and Assessment Act 1979* (NSW), s. 115Y(3).

69. *Environmental Planning and Assessment Act 1979* (NSW), s. 115Y(4).

70. *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z.

71. *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z(2).

72. *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z(3) *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 194.

73. *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z(4).


75. *Environmental Planning and Assessment Act 1979* (NSW), s 115Z(6).
76. *Environmental Planning and Assessment Act 1979* (NSW), s115Z(7).
77. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZB.
78. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZA.
79. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZA(2)
80. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZB.
81. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZB(3).
83. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZM; *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 193.
84. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 193(4).
85. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZF. For example, *State Environmental Planning Policy (State and Regional Development)* 2011
86. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZG.
87. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZH.
88. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZG.
89. *Environmental Planning and Assessment Act 1979* (NSW), Part 5.1 Div. 3.
90. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZD.
91. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZD.
92. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZD(2).
93. *Environmental Planning and Assessment Act 1979* (NSW), s. 115V.
94. *State Environmental Planning Policy (State and Regional Development)* 2011, Sch. 5.
95. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 193(1)(b).
96. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZG(3).
97. *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZH.
98. See our [Fact Sheet on Part 3A](http://jrpp.nsw.gov.au/) for more information.
99. *Environmental Planning and Assessment Act 1979* (NSW), s. 147; *Local Government Act 1993* (NSW), ss. 328A, 328B.
100. *Environmental Planning and Assessment Act 1979* (NSW), s. 147(1).
101. *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 86(1); *Environmental Planning and Assessment Act 1979* (NSW), s. 147.
102. *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 86(2).
103. *Environmental Planning and Assessment Act 1979* (NSW), s. 147(6).
104. *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 3.
107. Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 3.

108. The thresholds are set out in Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 3.

109. Environmental Planning and Assessment Regulation 2000 (NSW), cl. 50, Sch. 2, Part 2 (1)(e).

110. Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 2, cl. 7.

111. Environmental Planning and Assessment Act 1979 (NSW), s. 78A(8)(b).

112. Environmental Planning and Assessment Act 1979 (NSW), s. 5A.

113. Protected under the Fisheries Management Act 1994 (NSW). See Environmental Planning and Assessment Act 1979 (NSW), s. 5C.

114. Environmental Planning and Assessment Act 1979 (NSW), s. 79.

115. Environmental Planning and Assessment Regulation 2000 (NSW), cl. 80.

116. Environmental Planning and Assessment Regulation 2000 (NSW), cl. 79.

117. Environmental Planning and Assessment Regulation 2000 (NSW), cl. 77.

118. Environmental Planning and Assessment Act 1979 (NSW), s. 79(b).

119. Environmental Planning and Assessment Act 1979 (NSW), s. 79.

120. Environmental Planning and Assessment Act 1979 (NSW), s. 79C.

121. Environmental Planning and Assessment Act 1979 (NSW), s. 79B.

122. Environmental Planning and Assessment Act 1979 (NSW), s. 79B(5).

123. Environmental Planning and Assessment Act 1979 (NSW), ss. 79B(8), (9).


125. Under the Native Vegetation Act 2003 (NSW).

126. Under the Mining Act 1992 (NSW).


129. Environmental Planning and Assessment Act 1979 (NSW), s. 96.

130. Environmental Planning and Assessment Regulation 2000 (NSW), cl. 117.

131. Environmental Planning and Assessment Act 1979 (NSW), ss. 96(1), (1A); Environmental Planning and Assessment Regulation 2000 (NSW), cl. 119(1).

132. Environmental Planning and Assessment Act 1979 (NSW), s. 96(1A); Environmental Planning and Assessment Regulation 2000 (NSW), cl. 117.

133. Environmental Planning and Assessment Act 1979 (NSW), s. 96(2); Environmental Planning and Assessment Regulation 2000 (NSW), cls. 119(1), (2).

134. 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.

135. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

136. Standard Instrument – Principal Local Environmental Plan, cl. 3.3; State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, cl. 1.19.

137. Environmental Planning and Assessment Act 1979 (NSW) s. 76(2).
138. *Environmental Planning and Assessment Act 1979* (NSW) s. 76(1).

139. *Standard Instrument – Principal Local Environmental Plan*, cl. 3.2; *State Environmental Planning Policy (Exempt and Complying Development Codes)* 2008.

140. *Standard Instrument – Principal Local Environmental Plan*, cl. 3.2; *State Environmental Planning Policy (Exempt and Complying Development Codes)* 2008.

141. *Environmental Planning and Assessment Act 1979* (NSW) s. 91.

142. *Environmental Planning and Assessment Act 1979* (NSW) s. 29A; See Chapter 1.1 for a description of a Development Control Plan.

143. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 50, Sch. 1 Part 2 cl. 2(1)(c).

144. *Environmental Planning and Assessment Act 1979* (NSW), s. 111(1).


146. *Environmental Planning and Assessment Act 1979* (NSW), s. 112(1B).


Part Three - Managing the Coast

The following chapters provide brief information on some of the laws dealing with threats to the health of the environment and communities in coastal areas. For more detailed information read the online Fact Sheets that are available on our website.¹

Chapter 8 Protected plants and animals

Native coastal plants and animals (biodiversity) are a key drawcard for the tourist industry and vastly enrich the lives of people living in coastal areas. There are many threats to native plants and animals in NSW generally. In particular, climate change is likely to have a significant impact on the viability of many plant and animal species.² The Commonwealth and NSW governments have set up regimes for the recognition and management of particularly threatened species.

Native animals and certain native plants are protected in New South Wales.³ There are criminal penalties for harming protected native plants and animals without a licence.⁴ There are also more severe penalties for harming threatened species without a licence.⁵

How do NSW laws protect native plants and animals?

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.⁶

It is an offence to harm native animals.⁷ This includes harm by using a substance, an animal, a gun, explosive, net, or trap.⁸ It is an offence to buy, sell or possess native animals without a licence.⁹

The OEH issues licences which allow people to harm native animals.¹⁰

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

- they had a licence;¹¹
- the work causing the harm was done in accordance with an approval to carry out a development;¹²
- they had a conservation agreement or a joint management agreement;¹³ or
- the animal was not capable of fending for itself in its natural habitat.¹⁴

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.¹⁵ The lists divide threatened species into categories –
vulnerable, endangered and critically endangered.\textsuperscript{16}

It is a criminal offence to:

- harm threatened or endangered species from an endangered population or an endangered ecological community;\textsuperscript{17}
- pick any plant from an endangered population or an endangered ecological community;\textsuperscript{18} or
- trade, buy or sell any threatened or endangered species.\textsuperscript{19}

There are similar offences in relation to fish and marine vegetation.\textsuperscript{20} There are serious penalties for breaching threatened species laws.\textsuperscript{21}

**Federal protection**

Federally listed threatened species and ecological communities are also protected under Federal law.\textsuperscript{22}

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.\textsuperscript{23} 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;\textsuperscript{24}
- to recklessly take any threatened species or community, migratory species or listed marine species;\textsuperscript{25} or
- to trade in any threatened species or community, migratory species or listed marine species.\textsuperscript{26}

**How do I know if an activity is going to affect a threatened species?**

It is sometimes hard for a non-expert to decide if an activity is going to affect threatened species. For a start, you may not know whether or not there are any threatened species on the property. 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 the activity does require development consent and there are threatened species on the property, an assessment of the likelihood that the development will have a significant effect on the threatened species (also known as a ‘seven part test’\textsuperscript{27}) must be carried out. This is required unless the proponent obtains a BioBanking statement.\textsuperscript{28}

It is important to note that the test is not whether threatened species are present or likely to be present, but whether they are likely to be significantly impacted by the proposed development, so even if threatened species are present on the property, the development application is not necessarily going to be refused.\textsuperscript{29}
Chapter 9 Trees

Native vegetation is a significant management issue for coastal communities. In urban areas, trees are responsible for many neighbourhood disputes and in rural areas there are legal limits on land clearing. Native vegetation is important to the preservation of biodiversity and to the maintenance of rural landscapes. It is important that you are familiar with the laws that regulate when you can cut down trees on your property.

Can I remove a tree in my area?

If you live in an urban area, you should contact your local council to find out if a tree can be removed on your property and what approvals you may need to remove that tree. You may need a development consent to remove a tree on your property. If you live in a rural area, you should contact your local Catchment Management Authority before doing any clearing. You may need a consent or a property vegetation plan (PVP) in place before you can clear native vegetation.

A PVP is a plan registered on the land title that sets out what areas of native vegetation can be cleared and what areas will be maintained and managed for conservation. CMAs may not approve some proposed clearing where the landholder cannot make a suitable offset or the proposal is to clear a threatened ecological community.

There are a number of circumstances in which you can clear without an approval. It is best to contact your local CMA to inquire if the clearing you propose will require approval.

There are heavy penalties for clearing native vegetation without an approval.

What are tree preservation orders?

Tree preservation orders are prepared by local councils. They make it an offence to cut down, ring bark, prune or remove particular trees, trees within a certain zone or trees in the local government area without the consent of council. The terms of a tree preservation order will vary between local government areas, and some councils do not have one at all. Check with your local council to find out if a tree preservation order applies to your area. Some councils incorporate their tree preservation orders into their Development Control Plan.

My neighbour’s tree is causing damage to my property. What can I do?

You should first talk to your neighbour about the problem and see if you can come to an understanding. Mediation may also be worth considering. Community Justice Centres offer free mediation services throughout NSW, and they are familiar with neighbourhood disputes involving trees.

If you are unable to resolve the issue, you may be able to get a court order from the Land and...
Environment Court. The Court can only hear matters involving trees that are causing damage to your property or may cause injury to a person, or high hedges that obstruct views and sunlight.

The Court has a special process for dealing with tree disputes that is designed to encourage parties to represent themselves without the need for lawyers. The Court’s website contains information about the process, and the forms required to bring a tree dispute before the Court. Before commencing proceedings, you must first make a reasonable effort to reach an agreement with the owner of the tree or hedge. If you cannot reach an agreement then you must give 21 days’ notice to your neighbour that you intend to apply to the Court for an order. The Court has the power to make a wide range of orders including ordering that your neighbour take action to prevent the tree from causing damage or injury or obstruction, orders that the damage to your property be repaired, orders for the removal of the tree or compensation for damage, or pruning of the hedges.

**My neighbour has applied to the Land and Environment Court to order me to remove a tree. What are my options?**

You can either comply with their demands or defend the claim in Court. You can also negotiate with your neighbour and see if you can reach a compromise. If you do defend the dispute in Court you will have to argue that the tree is not the cause of the damage or posing a threat of injury. You could also make an argument for some alternatives to the removal of the tree, such as the installation of root barriers or the pruning of the tree. The Court’s website contains more information on how to defend a claim.

**I suspect my neighbour of damaging a tree to enhance their view, what can I do?**

Tree vandalism for view enhancement is an increasing problem in coastal areas. It is illegal to remove trees to enhance your view without approval. Many councils take the removal of trees to enhance views very seriously. A number of prosecutions have been carried out against residents who have vandalised trees. Some councils have also taken steps to continue the obstruction of the view by placing structures such as signs, shade cloth and shipping containers in place of the tree.

You should firstly report the incident to the council. You can also take proceedings yourself against your neighbour if the council does not take enforcement action.

**How is native vegetation protected in non-urban areas?**

The Native Vegetation Act 2003 (NSW) regulates the clearing of native vegetation in non-urban areas. If you want to remove or clear native vegetation you will either need to get approval from the Minister for the Environment or obtain a Property Vegetation Plan (PVP) from your local Catchment Management Authority (CMA).

Chapter 10 Bush Fires

Bush fires can have devastating impacts on coastal communities and can pose a significant threat to human life. The following information will provide guidance on some of the key bush fire issues. However, you should also refer to the Rural Fire Service (RFS) website which has a range of information and publications relating to bush fires and bush fire hazard reduction. The website also provides useful contact numbers for local RFS Offices.
What do I have to do to prevent bush fires?

You should contact the Rural Fire Service (RFS) to learn about the best way to prepare your home for bush fires.\(^{42}\)

You are legally required to take practicable steps to prevent bush fires occurring and spreading on or from your property, including any steps required by the Bush Fire Coordinating Committee.\(^{43}\) The Rural Fire Service can offer advice and assistance on carrying out hazard reduction work.

You may need to obtain a Bush Fire Hazard Reduction Certificate before undertaking hazard reduction work on your land. Both the Commissioner of the RFS and the local council may issue a Bush Fire Hazard Reduction Certificate.

If a member of the public complains about a fire hazard on your property, the RFS can investigate and take action. The RFS can issue you with a Hazard Reduction Notice requiring you to do hazard reduction work on your property.\(^{44}\)

You must either comply with the Notice by the specified date, or you can lodge an objection, which must be received within seven days of the service of the Notice.

If you object, the Hazard Management Officer of the RFS must genuinely attempt to resolve your concerns in consultation with you.\(^{45}\) However, that consultation must take into account any provisions of Bush Fire Risk Management Plans that apply to the land, environmental considerations and current legislation.

If you are still not satisfied you can appeal to the Commissioner of the RFS.\(^{46}\)

What is the Bush Fire Coordinating Committee?

The **Bush Fire Coordinating Committee (BFCC)** is made up of government and non-government organisations. The BFCC aims to develop policies and procedures to ensure a coordinated approach to major bush fire management issues. The main tasks of the BFCC include:

- planning for bush fire prevention;
- coordinating bush fire fighting; and
- advising the Commissioner of the RFS on bush fire prevention, mitigation and suppression.


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. The public must be notified and given the opportunity to make submissions on draft Bush Fire Risk Management Plans.\(^{47}\)

A Bush Fire Risk Management Plan can set out steps to be taken to reduce fire hazards, such as keeping areas of land cleared and conducting controlled hazard reduction burning. If a Bush Fire Risk Management Plan has been adopted for your area you can get a copy from your local council or RFS office.
**What powers does the Rural Fire Service have during bush fire suppression operations?**

When fighting a bush fire, the RFS has various powers to do things on private property. For example, if people or property are endangered or likely to be endangered by a fire, or another emergency, the RFS can pull down or cut fences, pull down buildings or structures, remove vegetation, and establish fire breaks. Compensation is not available for these actions, however damage caused should be covered by insurance. The RFS is also allowed to use water from your property to control or suppress a fire, and is not required to pay compensation. Any damage to your property caused by the RFS in good faith and in the course of fighting a fire must be covered as ‘damage caused by a fire’ in your fire insurance policy.

**I am worried about fire hazards in my community. Who do I tell?**

Complaints about fire hazards should be made to the RFS. You can make a complaint to a Fire Control Centre or fill out the online Bush Fire Hazard complaint form on the RFS website. Your details will be kept confidential. For a fire emergency call 000.

**I am worried about fire hazards on my own land. What can I do?**

If you are concerned about bush fire hazards on your property you can apply for a free Bush Fire Hazard Reduction Certificate (i.e. an environmental approval) at your local RFS Fire Control Centre. An RFS Officer will then visit and assess your property and provide you with advice on bush fire protection measures ranging from the clearing of vegetation to methods of improving the resilience of your home to ember attack. If a Bush Fire Hazard Reduction Certificate is issued then no further environmental approval is required from any other NSW authority or local council.

**What do I need to do if I want to undertake burning on my property?**

You should first visit the RFS website and look at the RFS document ‘Before You Light That Fire’ for an overview of the legal requirements. In all cases you should contact your local RFS Office for advice before proceeding with your plans to burn. You should also contact your local council.

**How can I find out about hazard reduction burns in my community?**

The RFS lists upcoming hazard reduction burns on its website.

**How can I tell if my land is mapped as bush fire prone?**

Local councils are required to record on maps the land that the Commissioner of the RFS has designated as bush fire prone land. Bushfire prone land maps can be viewed at your local council. If your land is within a bush fire prone area this will also be included in the section 149 certificate (planning certificate) for your property. If you refer to your section 149 certificate it is important to ensure that you are referring to the most up to date copy as bush fire prone land zones may have changed recently.

**Are there special requirements I must comply with when building on bush fire prone land?**

If you want to build a new home or building or do external renovations or additions to an existing building on bush fire prone land you must make sure the planned work complies with the requirements set out in Planning for Bush Fire Protection and the requirements contained in Australian Standard AS3959-2009 - Construction of buildings in bushfire-prone areas.
Measures include enclosed eaves, all exposed pipes to be made of metal and all opening windows to be screened with metal screens. The [RFS website](https://www.rfs.nsw.gov.au) has helpful information on building in a bush fire prone area. You should contact your local council for advice on how to make sure your building proposal will meet the bushfire protection requirements.

**Are there special requirements when subdividing bush fire prone land?**

If you want to subdivide bush fire prone land to create two or more lots you will need an approval from the Commissioner of the RFS called a Bush Fire Safety Authority, in addition to a development consent.\(^{58}\) Your local council will arrange for your application to be assessed by the RFS. The [RFS website](https://www.rfs.nsw.gov.au)\(^{59}\) has more information about subdividing bush fire prone land.

### Chapter 11 Pollution

Pollution is often the result of human habitation and industry. In coastal areas pollution can have serious adverse impacts on fragile ecosystems and human health. It is important to ensure that pollution is controlled so that our coastal areas remain attractive places to live and visit and our impact on the environment is minimised.

**Who regulates pollution in NSW?**

Pollution is regulated in NSW by the [Office of Environment and Heritage (OEH)](https://www.environment.nsw.gov.au) and the [Environment Protection Authority (EPA)](https://www.epa.nsw.gov.au).\(^{60}\) Pollution laws are also enforced by local councils and sometimes the NSW Police Force. Many activities require an environment protection licence, which in effect is a licence to pollute.

When determining what licence or approval an activity needs you must first identify the appropriate regulatory authority. This will depend on what type of activity is being carried out, the size of the activity, and where the activity is being carried out. The responsible authority may be the EPA, your local council, or another government agency.

The EPA issues environment protection licences to authorise certain activities that cause pollution. The criteria for determining whether the activity or premises requires an environment protection licence generally relates to the type of activity and size or intensity of the activity, or the sensitivity of the surrounding environment.

Local councils are responsible for regulating pollution from all premises that do not hold an environment protection licence. These are generally smaller scale industrial activities.

**What is an environment protection licence?**

An environment protection licence authorises pollution to levels set by the licence. The law sets out a list of ‘scheduled activities’.\(^{61}\) It is illegal for a scheduled activity to occur without an environment protection licence.\(^{62}\) A public register which lists all environment protection licences is available on the [EPA website].\(^{63}\) OEH has also published a [comprehensive guide](https://www.environment.nsw.gov.au) to help people determine if they need an environment protection licence, and if so, how to apply for one.\(^{64}\)

The EPA must publish the details of each licence application it receives on its public register.\(^{65}\) The EPA website allows you to [search for licences, applications, and notices].\(^{66}\)
Members of the public can comment on applications for environment protection licences and the EPA must consider these comments in deciding whether to grant a licence. This includes any public submissions made under the development assessment process.\(^67\)

You can also comment on applications to vary licences. These are listed on the EPA website.\(^68\) You can also comment on existing licences at any time. Licences are required to be reviewed by the EPA or other responsible authority at least every five years.

Any person can write to the EPA and request a statement of reasons explaining why the EPA granted or refused an environment protection licence application. This includes applications for transfers or variations.\(^69\) The reasons must set out the environmental and other considerations that were taken into account and the standards or requirements that were considered applicable by the decision-maker.\(^70\)

### 11.1 Water pollution

Any matter placed in water could be a pollutant depending on the effect the matter has on the water. Water pollution includes ‘the introduction of any solid matter, liquid or gas into water that changes the physical, chemical or biological condition of the water’.\(^71\)

It is illegal to pollute water without an environment protection licence.\(^72\) This includes both surface and ground water, as well as water mains and pipes.\(^73\)

It is also an offence to place matter where it is likely to get into the water and cause pollution, such as a drain or gutter or dry river bed, even if the matter does not actually reach the water.\(^74\)

### Water pollution at Cattai Wetlands

The Cattai Wetlands (located in the Greater Taree area) were under major threat from pollution caused by acid sulfate soils. The area had previously been drained for agricultural production. A rescue plan was adopted and implemented by Greater Taree City Council in conjunction with local community groups and commercial fisheries. A remediation plan for the wetlands was developed. The wetlands were re-vegetated and noxious weeds were cleared. The native vegetation accelerated sedimentation of artificial drainage lines. This allowed sea water to return to the wetland and neutralise the acid sulfate in the soil. Ongoing bush regeneration works are carried out by conservation volunteer teams to maintain the health of the wetlands.

### 11.2 Air pollution

Air pollution is the emission of any impurity into the air, including dust, smoke, cinders, solid particles, gases, fumes, odours, or radioactive substances.\(^75\) Pollution laws establish specific standards for listed pollutants,\(^76\) and it is an offence to carry out an activity which causes the emission of air pollution in excess of these standards.

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.\(^77\) An environment protection licence is required to emit offensive odours from a scheduled premises.\(^78\)

**Is a licence needed to light fires on my property?**
The burning of vegetation and domestic waste is generally prohibited in most local government areas unless you have approval from council or the EPA. Contact your local council for information about restrictions on lighting fires and burning garden waste or rubbish. Most councils ban these activities and can issue penalty notices.

**What should I do about smoky vehicles?**

A motor vehicle must not emit exhaust containing visible excessive air impurities over a certain standard of concentration for more than 10 seconds at a time. This restriction does not apply to vehicles that were built or modified solely for use in motor racing or off road motor sport.

**11.3 Dumping waste**

Dumping waste or littering public land or open private land is an offence. Litter is defined as any solid or liquid domestic or commercial refuse, debris or rubbish. Litter includes, metal, cigarette butts, abandoned vehicles, construction or demolition material, garden clippings, soil, sand or rocks.

It is also an offence to litter from a motor vehicle or trailer.

**11.4 Noise pollution**

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

If there is offensive noise, a police officer, council officer or EPA officer can issue a noise abatement direction, which is a temporary direction requiring the noise to be controlled. A noise abatement direction lasts for 28 days, and only covers offensive noise. An offensive noise is a noise that is likely to interfere with the comfort of a person on another property. The council can issue a noise control notice to place ongoing restrictions on the noise.

A person who is affected by ongoing offensive noise within their own house (or while occupying other premises) can apply to the Local Court for an order that the offensive noise stop. This is called a noise abatement order.

**11.5 Reporting Pollution**

**What do I do if I suspect someone of causing pollution?**

If you are concerned about a pollution incident, you should first contact the individual or company causing the pollution to request an explanation and ask them to fix the problem. You should also report the pollution incident to the EPA Environment Line on 131 555.

Different organisations are responsible for regulating different types of pollution and also different types of activities. The EPA website has a list of contacts and a guide to who you should make a pollution complaint to.

EDO NSW has developed a user friendly webpage called the Compliance Portal which is designed to help you figure out if an activity that you suspect is causing pollution requires an environment protection licence and whether such a licence has been issued.

**What are some tips for reporting pollution incidents?**

Keep notes of your discussions and record the name of the people who take your calls. The EPA can choose to investigate your complaint, or may refer you to another organisation responsible for regulating the pollution.

If the responsible authority does not resolve the problem to your satisfaction, you should:
• Obtain a copy of the development consent for the premises from your local council and check whether the conditions of consent include pollution control.

• If the activity is a ‘scheduled activity’ obtain a copy of the environment protection licence for the premises from the EPA’s public register and check whether the licence authorises the pollution.

• Obtain copies of any monitoring reports which the polluter may have submitted to the EPA from the public register and compare them with the pollution levels permitted under the environment protection licence.

Contact the environment groups who are interested in preventing pollution. See the Contacts section of this guide for a list.

Contact the EDO NSW free Environmental Law Advice Line on 02 9262 6989 or 1800 626 239 to obtain some legal advice about your options. Ultimately, if the responsible authority does not enforce pollution laws, you may be able to do so yourself.

What if there is a new development proposed in my community that will cause pollution?

If there is a development proposal that will cause pollution and will require an environment protection licence, the decision-maker (usually the local council) must send the EPA the development application, and the EPA must advise the decision-maker its general terms of approval. If the EPA indicates it that will not approve the development and will not issue an environment protection licence then the development application cannot be approved.

If the development is State significant development or State significant infrastructure which has been approved by the Minister for Planning and Infrastructure or the Planning Assessment Commission, the EPA must issue an environment protection licence consistent with that approval. For more information see Chapter 3.

Chapter 12 Heritage

Heritage items, places and buildings are important features of many coastal communities. All levels of government have a responsibility for ensuring Australia’s heritage is protected.

12.1 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. There is also a clause in the Standard Instrument LEP that all councils must adopt that deals with heritage conservation.

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. An interim heritage order can last for up to 12 months, 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).

12.2 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. 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, and can be revoked by the Minister.

**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. 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. They cannot be made over State significant development or State significant infrastructure. Emergency orders last for 40 days. 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.

**What is the Heritage Council of NSW?**

The Heritage Council is an advisory body whose members are appointed by the Minister for Heritage, 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).

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. It also makes recommendations to the Minister on places and objects for listing on the State Heritage Register.

**12.3 Federal Heritage Protection**

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

**World Heritage Area**

Would 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.

**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. 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. 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.

Chapter 13 Aboriginal Cultural Heritage

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.

13.1 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 or as National Heritage, listed under the Commonwealth Heritage List or the National Estate Register, protected under the Federal Indigenous Heritage Protection law, 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.

13.2 State protection

The Office of Environment and Heritage (OEH) is responsible for protecting Aboriginal cultural heritage in NSW. Under NSW law, ‘Aboriginal objects’ are deposits, objects or material evidence, including Aboriginal remains, relating to Aboriginal habitation of NSW. These legally belong to the Government. An ‘Aboriginal place’ is a place which is or was of special significance for Aboriginal people, and which the Minister for the Environment has recognised and declared to be ‘significant’. 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.
- 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.
- 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.
- A Conservation Agreement can be entered into with landowners to protect areas which contain objects or Aboriginal places of special significance.
- Destroying or damaging items or places of Aboriginal heritage value without an approval is a criminal offence.

Cultural heritage items or places can also be protected via the State Heritage Register.

There is a process for determining whether a developer needs to obtain an Aboriginal Heritage Impact Permit (AHIP) before commencing work on a development. An AHIP is a statutory instrument that the OEH issues which allows to 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.\textsuperscript{130}

\subsection*{13.3 Local government 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.\textsuperscript{131} 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.\textsuperscript{132} However, some developments that may have an impact on Aboriginal cultural heritage do not require development consent.\textsuperscript{133}

\textbf{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.\textsuperscript{134}

\textbf{What if cultural heritage is damaged without approval?}

It is an offence to harm or desecrate an Aboriginal object or place without a permit.\textsuperscript{135} The penalties are higher for intentional harm.

\section*{Chapter 14 Marine Parks}

Marine parks preserve the biodiversity of marine environments and provide for the sustainable use of parks by the community. Marine parks are divided into general use zones, habitat protection zones, sanctuary zones, and special use zones.\textsuperscript{136}

\textbf{Can I go fishing in a marine park?}

Each marine park has different restrictions on the activities you can carry out in the marine park. Fishing is usually prohibited in the sanctuary zone of the marine park. To find out what activities you can and cannot carry out in a marine park, visit the Marine Parks Authority website or contact your local Marine Park Office.\textsuperscript{137}

\textbf{What about fishing generally?}

You must have a licence to fish recreationally in NSW.\textsuperscript{138} There are many regulations governing bag and size limits, and species and numbers of fish you can take.\textsuperscript{139} There are also restrictions on the methods you can use to catch fish and invertebrates. To find out about the laws that may apply to your fishing activities go to the Fisheries website.\textsuperscript{140}

The Department of Primary Industries (DPI) also produces the NSW Recreational Saltwater and Freshwater Fishing Guides each year. The guides are available on the DPI website and from DPI offices.\textsuperscript{141}
Chapter 15 Ramsar Wetlands

Coastal wetlands provide critical habitat for many threatened native and migratory species. They also provide essential ecosystem services by filtering and cleaning water and helping to prevent floods. Wetlands are recognised globally as important ecosystems. In 1971 Australia entered into an international agreement to protect important wetlands. The agreement is known as the Convention on Wetlands of International Importance or the ‘Ramsar Convention’. Wetlands that are protected under the Ramsar Convention are commonly known as Ramsar wetlands. For more information about Ramsar wetlands, visit the Ramsar wetlands website.

How are Ramsar wetlands protected in Australia?

Ramsar wetlands are protected under Commonwealth law. If an activity will or is likely to have a significant impact on a Ramsar Wetland the activity will require approval from the Federal Minister for the Environment. The public can comment on development applications being assessed by the Federal Minister for the Environment on the EPBC Act website. Additionally, it is a criminal offence to do anything that will have or is likely to have a significant impact on the ecological character of a Ramsar wetland without approval.

What are the Ramsar wetlands in the NSW Coastal Zone?

Myall Lakes

The Myall Lakes were listed as a Ramsar site in 1999. Myall Lakes are considered a representative wetland because they are extensive, are in near-natural condition, and are a good example of the barrier lagoon systems found on the NSW North Coast. They also play an important role in the functioning of one of NSW’s most important remaining brackish systems. The lakes support a high biodiversity which includes 968 species of plants and 298 bird species. The lake system also provides a permanent water source, and serves as an important drought refuge for fauna.

Hunter Estuary Wetlands

The Hunter Estuary Wetlands are made up of the Kooragang Nature Reserve and the Shortland Wetland (also known as the Hunter Wetlands Centre). The Kooragang Nature Reserve is part of the estuarine section of the Hunter River close to large industrial sites. The Kooragang Nature Reserve is widely recognised for its conservation of migratory birds, including shorebirds and provides critical habitat during periods of inland drought. The Shortland Wetland is a small collection of wetland types adjacent to urban development that have recently been rehabilitated. The Shortland Wetland is the only wetland found within the Sydney Basin biogeographic region that has a combination of high conservation value near-natural wetlands and high conservation value artificial wetlands. The wetlands are important as both a feeding ground and roosting site for seasonal shorebirds and transient migratory birds.

Towra Point Nature Reserve

Towra Point Nature Reserve, on the southern shore of Botany Bay, supports federally listed threatened species, including plants, mammals, and frogs. It is an important area for maintaining the biodiversity of the Sydney region, and it provides critical habitat and food source for fish and crustaceans. It is one of the most important migratory bird sites in NSW and an important breeding area for the endangered little tern, providing critical roosting and feeding habitat for...
migratory shorebirds protected under international agreements.\(^{147}\)

11. *National Parks and Wildlife Act 1974* (NSW), ss. 98(3) and 99(2).
16. See: *Threatened Species Conservation Act 1995* (NSW), Sch. 1, 1A, 2; *Fisheries Management Act 1994* (NSW), Sch. 4, 4A, 5.
23. 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.
27. 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).

28. Threatened Species Conservation Act 1995 (NSW), s. 127ZO.

29. Environmental Planning and Assessment Act 1979 (NSW), ss. 5A, 79C.


31. The Native Vegetation Act 2003 (NSW) does not apply to land zoned residential (but not rural-residential), village, township, industrial or business under a planning instrument. It also does not apply to land that is reserved under the National Parks and Wildlife Act 1974 (NSW), State Forestry land, and certain urban areas: National Parks and Wildlife Act 1974 (NSW), Sch. 1. Contact details for CMA can be found at http://www.cma.nsw.gov.au/


33. Trees (Disputes Between Neighbours) Act 2006 (NSW), ss. 7, 14A, 14B.

34. See the Land and Environment Court website at: http://www.lawlink.nsw.gov.au/lawlink/lec/ll_lec.nsf/pages/LEC_tree_disputes_information

35. Trees (Disputes Between Neighbours) Act 2006 (NSW), ss. 10, 14E.

36. Trees (Disputes Between Neighbours) Act 2006 (NSW), ss. 8, 14C.

37. Trees (Disputes Between Neighbours) Act 2006 (NSW), ss. 7, 9, 10, 14D. The Trees (Disputes Between Neighbours) Act 2006 (NSW) only applies to land zoned residential, rural residential, village, township, industrial or business under a planning instrument: s. 4.


40. Environmental Planning and Assessment Act 1979 (NSW), s. 123.

41. See: www.rfs.nsw.gov.au

42. See: www.rfs.nsw.gov.au or call 1800 679 737.

43. Rural Fires Act 1997 (NSW), s. 63(2). It is the duty of the owner or occupier of land to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on or from, that land.

44. Also called a Section 66 Notice, Rural Fires Act 1997 (NSW), s. 66. There are limits on what you can be required to do. For example, the RFS cannot require you to remove trees that are reasonably necessary for a wind break or the protection of threatened species.

45. Rural Fires Act 1997 (NSW), s.67. The RFS has 14 days to confirm, vary or withdraw the notice.

46. Rural Fires Act 1997 (NSW) s. 68. You have 7 days to lodge an appeal after the council’s decision, or the end of the 14 days, whichever is the earlier.

47. Rural Fires Act 1997 (NSW), s. 57.


50. Rural Fires Act 1997 (NSW), s. 28.


53. **Rural Fires Act 1997** (NSW), s. 100C.


56. **Environmental Planning and Assessment Act 1979** (NSW), s. 146.


58. **Rural Fires Act 1997** (NSW), s. 100B; **Rural Fires Regulation 2008** (NSW), cl. 45.


60. The main law in NSW regulating water, air and noise pollution is the **Protection of the Environment Operations Act 1997** (NSW).


70. **Protection of the Environment Operations (General) Regulation 1998** (NSW), cl. 46(1).


72. **Protection of the Environment Operations Act 1997** (NSW), s. 120.


74. **Protection of the Environment Operations Act 1997** (NSW), s. 120. See also **Newcastle City Council v Pace Farm Egg Products Pty Ltd [No.2] [2005] NSWLEC 241**.


78. **Protection of the Environment Operations Act 1997** (NSW), s. 129. A ‘scheduled activity’ is one listed under the **Protection of the Environment Operations Act 1997** (NSW), Sch. 1.

79. **Protection of the Environment Operations (Clean Air) Regulation 2010** (NSW), Sch. 8 lists the local government areas in which burning is prohibited.

80. **Protection of the Environment Operations (Clean Air) Regulation 2010** (NSW), s. 12.


82. **Protection of the Environment Operations Act 1997** (NSW), ss. 115, 142A, 143, 144, 145, 145A

83. **Protection of the Environment Operations Act 1997** (NSW), s. 144A. Dumping waste may also be considered land pollution, see **Protection of the Environment Operations Act 1997** (NSW), ss. 142A-142E.


88. The Dictionary in the *Protection of the Environment Operations Act 1997* (NSW) defines ‘offensive noise’ as noise which is harmful to a person who is outside the premises, or which interferes unreasonably with the comfort or repose of a person outside the premises.


91. See: www.edo.org.au/edonsw/compliance


94. This is called integrated development; *Environmental Planning and Assessment Act 1979* (NSW), ss. 91, 91A; *Protection of the Environment Operations Act 1997* (NSW), s. 51.

95. *Environmental Planning and Assessment Act 1979* (NSW), ss. 92A, 91A(4).

96. *Environmental Planning and Assessment Act 1979* (NSW), ss. 89J, 89K, 115ZG, 115ZH.

97. See Chapter 1 for more information on Local Environmental Plans.

98. Standard Instrument – Principal Local Environmental Plan, Sch. 5 – Environmental Heritage.


100. *Heritage Act 1977* (NSW), s. 29.

101. *Heritage Act 1977* (NSW), Part 3A.

102. *Heritage Act 1977* (NSW), s. 29.

103. *Heritage Act 1977* (NSW), s. 29.


106. *Environmental Planning and Assessment Act 1979* (NSW), ss. 89J, 115ZG.


109. The Heritage Council is established under the *Heritage Act 1977* (NSW).

110. *Heritage Act 1977* (NSW), s. 8; Allocation of the Administration of Acts.

111. *Heritage Act 1977* (NSW), s. 8.


113. For more information visit: http://www.environment.nsw.gov.au/heritage/heritagecouncil/role.htm


115. The criteria for the National Heritage list and the nomination form can be found at: http://www.environment.gov.au/heritage/nominating/index.html


118. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

119. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), ss. 9(1), 12(3), 12(4).

120. *National Parks and Wildlife Act 1974* (NSW), s. 5.

121. *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.

122. *National Parks and Wildlife Act 1974* (NSW), s. 84.


128. *Heritage Act 1977* (NSW), Part 3A.


130. *Environmental Planning and Assessment Act 1979* (NSW), ss. 89J, 115ZG.

131. 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).

132. Standard Instrument – Local Environmental Plan cl. 5.10.

133. Standard Instrument – Local Environmental Plan cl. 5.10.


137. Contact details for marine park offices are available under each marine park page on http://www.mpa.nsw.gov.au


142. See: http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0__

143. *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 16.

144. See: http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referrals&limit=999999&text_search=

145. *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 17B. Ramsar Wetlands are also protected under *State Environmental Planning Policy 14 – Coastal Wetlands*.

146. For more information visit: http://www.environment.gov.au/cgi-bin/wetlands/ramsardetails.pl?refcode=52

147. For more information, visit http://www.environment.nsw.gov.au/wetlands/TowraPtRamsar.htm
Part Four - Climate Change and the Coast

The International Panel on Climate Change (IPCC) defines climate change as any change in climate that persists for an extended period of time, whether due to natural variability or as a result of human activity.¹ This is the definition chosen for this booklet. The IPCC definition differs from that in the United Nations Framework Convention on Climate Change (UNFCCC), where climate change is defined as a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

What are the effects of climate change on coastal communities?

Coastal communities and the coastal environment are particularly vulnerable to the effects of climate change due to their proximity to the coastline. Climate change is expected to cause rising sea levels, and this is expected to increase coastal hazards such as coastal inundation, coastal erosion, increased frequency of extreme storm events, and flooding.² The law that governs the way the NSW Government, councils, and landholders respond to sea level rise in NSW is currently in a period of transition.

What will be the effects of sea level rise on the NSW coastline?

Sea level rise affects high and low tide levels and the natural processes responsible for shaping the coastline. It is acknowledged that the effects will include:³

- higher projected storm surges and inundation levels;
- recession of beach and dune systems;
- erosion of coastal dunes and beach barrier systems;
- the advance of tidal limits into estuaries;
- risks for existing coastal gravity drainage, stormwater infrastructure and sewerage; and
- implications for coastal ecosystems.

How is climate change factored into coastal planning?

Decision-makers are required to factor the effects of climate change into their planning decisions in a number of ways:

- Decision-makers are required to consider the likely impact of activities on the environment, coastal processes, and coastal hazards, including those under projected...
climate change conditions in development consents.\(^4\)

- When assessing coastal development, decision-makers must take into consideration the likely impact of interactions between coastal process, hazards and the development.\(^5\)

- In those coastal councils that have adopted the Standard Instrument LEP, decision-makers must consider, for all development within the coastal zone, the effect on the proposed development of coastal processes, coastal hazards and sea level rise and the impact the development will have on coastal process, coastal hazards and sea level rise.\(^6\)

**What is NSW Government policy on sea level rise?**

The NSW Government is currently undertaking coastal management reforms. Stage one of the reforms has been announced, and the *Coastal Protection Act 1979* (NSW) has been amended to change the way that sea level rise projections are made and also the way that councils and the community can respond to sea level rise. These changes will commence in late-2012 once the related code of practice adopted under the *Coastal Protection Regulation 2011* is updated. The NSW Sea Level Rise Policy Statement is no longer NSW Government policy. While the reform is underway, councils and the community are referred to the [Coastal Risk Management Guide] and the [Flood Risk Management Guide], released by OEH.

Land within the coastal zone is no longer categorised into coastal hazard risk categories. The NSW Government will advise councils on how to prepare section 149 certificates (planning certificates) in the absence of these categories. The NSW Government has announced that local councils will no longer be required to use State-wide sea level rise projections in preparing their local environmental plans and assessing development applications.

**What may be the effects of climate change on coastal properties and home insurance?**

Some damage caused to property by climate change may not be covered under standard home and contents insurance policies. Risks that are generally not covered by insurance or are presently difficult to insure against include storm surges, landslip, coastal erosion and sea level rise.\(^9\) These are often referred to as salt water risks. Check your insurance policy and talk to your insurer to check if your home is covered for damage caused by salt water risks.

**Can landowners protect properties at risk of damage due to coastal hazards?**

In October 2012 changes were made to the way that landholders will be able to respond to sea level rise. Coastal protection works such as sandbags are now able to be constructed by landholders much more easily, sometimes without the need for approval. The penalties for offences relating to temporary coastal protection works have been reduced.\(^10\)
Previously, landholders could only place coastal protection works such as sandbags in emergency situations where beach erosion was already occurring, or was imminent or reasonably foreseeable. The changes will allow landholders to construct temporary coastal protection works in order to reduce the impact or likely impact of wave erosion on land.\footnote{Coastal Protection Act 1979 (NSW), s. 55T.}

**Private Land**

A landholder will not need approval to place complying temporary coastal protection works on their own property. Temporary coastal protection works will no longer be required to be removed 12 months after placement,\footnote{Coastal Protection Act 1979 (NSW), s. 55O.} and the restriction that allows temporary coastal protection works to be placed on private land only once will be removed. Landholders will also be able to place temporary coastal protection works on other people’s private property, as long as they have a lease or an easement or the permission of that landholder.

**Public Land**

Landholders will now be able to apply for a certificate to allow them to place and maintain temporary coastal protection works on public land for the purpose of mitigating the effects of wave erosion on their own land. No lease or easement is required. The maximum period for temporary coastal protection works on public land will increase from 12 months to 2 years.\footnote{Coastal Protection Act 1979 (NSW), s. 55VA.}

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3. For more information see the NSW Government’s *Coastal Risk Management Guide* at: \url{http://www.environment.nsw.gov.au/resources/water/coasts/10760CoastRiskManGde.pdf}
4. *NSW Planning Circular 10-032 – Amendments to Environmental Planning and Assessment Regulation 2000*, cl. 228
5. *State Environmental Planning Policy 71 – Coastal Protection*, cl. 8(j).
9. Insurance Council of Australia submission to *House of Representatives Standing Committee Inquiry on Climate Change and Environmental Impacts on Coastal Communities*, Submission p. 12
11. *Coastal Protection Act 1979* (NSW), s. 55T.
12. *Coastal Protection Act 1979* (NSW), s. 55O.
13. *Coastal Protection Act 1979* (NSW), s. 55VA.
Part Five - Protecting the Coast

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

Chapter 16 Getting involved

One of the best ways the community can protect the coast is by being involved in the planning system. The following information is designed to assist community members to participate more effectively in coastal planning and decision-making.

EDO NSW weekly e-bulletin

EDO NSW produces a free weekly email Bulletin that contains information about new major project applications, planning proposals, and EPBC Act referrals that are open for public comment. To subscribe to the bulletin visit our website, email education@edonsw.org.au or call 02 9262 6989.

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 Panel or the Director-General of the Department of Planning and Infrastructure.

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. 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. 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 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.

**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 and Federal Parliament 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.

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**Chapter 17 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. 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.  

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.

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.

Chapter 18 Getting involved in community organisations that care for the coast

Below is a summary of some organisations that work to maintain and improve the health of coastal areas.

Coastcare
Coastcare is a group of community volunteers caring for their coast. Coastcare volunteers identify local environmental problems and work together to achieve practical solutions. There are currently 60,000 active Coastcare volunteers in 2,000 Coastcare groups all around the country.

Coastcare and Landcare groups tackle problems like dune erosion, loss of native plants and animals, storm water pollution, weeds and control of human access to sensitive areas.

To search for a Coastcare group in your area visit the Coastcare website.  

Dunecare
Many coastal communities also have Dunecare groups that work to maintain and improve the health of dune systems. To find out more about Dunecare groups in your area contact your local council.

Greening Australia
Greening Australia has over 25 years of experience in creating sustainable environmental outcomes though a wide range of conservation activities. Greening Australia has a network of over 350 staff in locations across the country and works with people from remote, regional and metropolitan communities. For more information visit the Greening Australia website or call (02) 9560 9144.

Landcare
Landcare is a national network of thousands of locally-based community groups who care for our country. Landcare is the biggest environmental volunteer movement in Australia. There are Landcare groups in most communities in NSW. You can find out about your local Landcare group by contacting Landcare Australia. For more information visit the Landcare website or call 1800 151 105.
**Streamwatch**

Streamwatch is a long running water monitoring program run in partnership between Sydney Water and the Sydney Catchment Authority (SCA). It supports local communities and schools across Sydney, the Blue Mountains, Illawarra and Southern Highland regions. Streamwatch groups investigate and take action on water quality and catchment and ecosystem health.

Streamwatch began in 1990. There are now over 250 community, school and other groups that monitor water quality and macroinvertebrates (water bugs) across more than 600 sites.

For more information visit the [Streamwatch website](http://streamwatch.sydneywater.com.au) or contact Sydney Water on 1800 724 650 or by email on streamwatch@sydneywater.com.au

**Waterwatch**

Small waterways make up three-quarters of the total stream network within any given catchment. These can be monitored most effectively by local communities, including land managers. The Waterwatch program can tailor a package of equipment and methods that suit your site and issue of interest, and your preferred frequency and type of testing.

For more information visit the [Waterwatch website](http://www.waterwatch.com.au) or call (02) 9895 7402.

**WeltandCare**

WetlandCare Australia is a not-for-profit company dedicated to achieving healthy wetlands in healthy catchments. WetlandCare has been protecting and restoring Australian wetlands for over 20 years. It is Australia's only dedicated national wetland conservation organisation, undertaking many small natural resource management projects in consultation with landowners and authorities, as well as major programs such as the Sustainable Coastal Wetlands Project covering NSW coastal wetlands from Tweed Heads to Gosford.

For more information visit the [WetlandCare website](http://www.wetlandcare.com.au) or call (02) 6681 6169.

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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.
8. *Environmental Planning and Assessment Act 1979* (NSW), s. 79.
9. *Environmental Planning and Assessment Act 1979* (NSW), ss. 89F, 115Z,
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.
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).
Useful Contacts

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,
Wembley 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

2. STATE GOVERNMENT DEPARTMENTS

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.  

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

Catchment Management Authorities covering the NSW Coastal Zone

Hawkesbury-Nepean CMA
159 Auburn Street, Goulburn, NSW 2580
Phone: (02) 4828 6747
Email: hn@cma.nsw.gov.au
Website: www.hn.cma.nsw.gov.au

Hunter-Central Rivers CMA
816 Tocal Road, Paterson, NSW 2421
Phone: (02) 4930 1030
Email: hcr@cma.nsw.gov.au
Website: www.hcr.cma.nsw.gov.au
Northern Rivers CMA
49 Victoria Street, Grafton, NSW 2460
Phone: (02) 6642 0622
Email: northern@cma.nsw.gov.au
Website: www.northern.cma.nsw.gov.au

Southern Rivers CMA
84 Crown Street, Wollongong East, NSW 2520
Phone: (02) 4224 9700
Email: southern@cma.nsw.gov.au
Website: www.southern.cma.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

3. COMMONWEALTH GOVERNMENT DEPARTMENTS

Department of Sustainability, Environment, Water, Population and Communities
Street address: John Gorton Building, King Edward Terrace, Parkes, ACT
Postal address: GPO Box 787, Canberra ACT 2601
Phone: (02) 6274 1111
Website: www.environment.gov.au
Department of Climate Change and Energy Efficiency
Postal address: GPO Box 854, Canberra ACT 2601
Phone: 1800 057 590
Email: enquiries@climatechange.gov.au
Website: http://www.climatechange.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

4. ENVIRONMENTAL ORGANISATIONS

Australian Conservation Foundation
Suite 504, 32 York St Sydney NSW 2000
Phone: 02 8270 9900
Fax: 02 8270 9988
Website: www.acfonline.org.au/

ClimateWatch
126 Bank Street, South Melbourne, VIC 3205
Phone: 03 9682 6828
Fax: 03 9686 3652
Website: http://www.climatewatch.org.au/

Coastcare
PO Box 3095 Wollongong East NSW 2500
Phone: 02 4224 9700
Fax: 03 9686 3652
Website: www.coastcare.com.au/

Dunecare
Contact your local council or Landcare NSW for details of your local Dunecare group
EarthWatch Institute Australia
126 Bank Street, South Melbourne, VIC
Phone: 03 9682 6828
Fax: 03 9686 3652
Website: www.earthwatch.org/australia

Greening Australia
142 Addison Rd Marrickville NSW 2204
Phone: 02 9560 9144
Fax: 02 9550 0676
Website: www.greeningaustralia.org.au

Landcare Australia
PO Box 5666 West Chatswood NSW 1515
Phone: 02 9412 1040
Fax: 02 9412 1060
Website: www.landcareonline.com.au

Nature Conservation Council of NSW
Street Address: Level 2, 5 Wilson Street, Newtown NSW
Postal Address: PO Box 137, Newtown NSW 2042
Phone: (02) 9516 1488
Website: www.nccnsw.org.au

Nature Conservation Trust of NSW
Head Office
PO Box 1121 Lismore NSW 2480
Phone: 02 6620 3633 Fax: 02 6621 2669
Website: www.nct.org.au

Total Environment Centre
Suite 2, Level 1, 89 Jones Street, Ultimo 2007
Phone: 02 9211 5022
Website: http://www.tec.org.au/

Wilderness Society
PO Box 249 Haymarket NSW 1240
Phone: 02 9282 9553
Fax: 02 9282 9557
Website: www.wilderness.org.au

WIRES
PO Box 260 Forestville NSW 2087
Phone: 13000 WIRES or 1300 094 737
Fax: 02 8977 3399
Website: www.wires.org.au

5. OTHER CONTACTS

New South Wales Aboriginal Land Council (NSWALC) covering the Coastal Zone
Head Office
Street Address: Ground Floor - 33 Argyle St, Parramatta NSW
Postal Address: PO Box 1125, Parramatta NSW 2124
Phone: (02) 9689 4444
Website: www.alc.org.au

Northern Zone - Coffs Harbour
Street Address: 2/26 Park Ave, Coffs Harbour NSW 2450
Postal Address: PO Box 1912 Coffs Harbour NSW 2450
Phone: (02) 6659 1200

Southern Zone - Queanbeyan
Street Address: Suite 110 Riverside Plaza, Monaro St, Queanbeyan NSW
Postal Address: PO Box 619, Queanbeyan NSW 2620
Phone: (02) 6124 3555

Eastern Zone - Parramatta
Street Address: 50/ 24-26, Watts Street, Gosford NSW
Postal Address: PO Box 670, Gosford NSW 2250
Phone: (02) 9689 4444
Glossary

**Appropriate regulatory authority** – The body responsible for regulating pollution from a particular activity. The appropriate regulatory authority will depend on what type of activity is being carried out, the size of the activity and where the activity is be carried out. The appropriate regulatory authority may be Environment Protection Authority, police or the local council.

**Development** – The erection or demolition of a building or structure, the carrying out of a work, the use of land or the subdivision of land.

**Development consent** – Permission granted by a consent authority to carry out a particular development.

**Consent authority** – The authority responsible for determining an application for development consent. The consent authority may be the Minister for Planning and Infrastructure, the Department of Planning and Infrastructure, the Planning Assessment Commission, a Joint Regional Planning Panel or the local council.

**Environmental Planning Instrument (EPI)** – Legal instruments that set out what development can take place on particular land and the requirements relating to that development. The two types of EPIs are Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPPs).

**Environment Protection Licence** - Licences issued by the Environment Protection Authority for the regulation of pollution from a particular activity.

**Judicial Review** – Where a Court reviews the legality of a decision.

**Merits Appeal** – Where a Court reviews a decision on the merits.

**Planning Proposal** – A draft Local Environmental Plan which explains the intended effect of the Plan or the proposed change to an existing Plan.

**Relevant Planning Authority** - The ‘relevant planning authority’ sponsors a ‘planning proposal’ thought the gateway process. The relevant planning authority will usually be a local council but the Minister for Planning and Infrastructure can appoint other individuals or bodies as the relevant planning authority.

**Section 149 Certificate** – Also called planning certificates. These certificates tell you what environmental planning instruments apply to the land. A section 149 certificate can be obtained from your local council.