What is the public interest?

EDO NSW test:

- the issue has significance beyond the material or financial interests of a particular individual or group, and
- the issue involves a real threat to the environment; or
- engagement in the issue has the capacity to result in good environmental outcomes; or
- the issue concerns the manner in which the environment is regulated, now and into the future; or
- the issue raises matters regarding the interpretation and future administration of statutory provisions.
Key elements of public interest environmental law

- Right to access information
- Right to have a say
- Right to bring civil proceedings
- Types of legal action
- Specialised Court
- Costs Jurisprudence
Access to information
Right to have a say
Right to bring civil proceedings (standing)
Case study: Common law standing
Statutory standing
Types of legal action

- Merits appeals
- Judicial review
- Third party enforcement
Case study: Merits appeals
Case study: judicial review
Case study: Third party enforcement
Specialised court
Costs
Key advantages of litigation

- Can result in substantive outcomes – Court can overturn bad decisions or void illegal decisions
- Can raise awareness of an issue – focus public attention
- Can help make decision-makers accountable
- Even unsuccessful litigation can lead to positive outcomes
  - expose weaknesses in the law and highlight the need for law reform
  - CUB case
Key challenges to litigation

- Tight time frames
- Limited merits appeal rights
- Most cases are judicial review proceedings
  - Court discretion not to grant relief
  - Ability to remake same decision
- Cost
  - No Legal Aid
  - Security for Costs orders
- Special legislation
- Proponents reapply - Bulga