



Have Your Say: Bobs Farm Sand Project

Bobs Farm

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Jemilah Hallinan – Outreach Director

Emily Ryan – Outreach Solicitor



About EDO NSW



Presentation overview

- Introduction
- Gathering Information
- Commenting on SSD Applications
- Tips on Being Effective
- If Approval is Granted



Image: Howard Lake

Information, not advice

- The information contained in this workshop is a guide only and is no substitute for legal advice relating to your particular issue.
- If you need legal advice about your particular issue, please call our Environmental Law Line.

INTRODUCTION



Advantages of public participation

1. Real environmental outcomes can be achieved
2. The decision benefits from local knowledge
3. Community becomes a key stakeholder (not just industry and government)
4. Public has greater buy-in and ownership of the law or policy objectives
5. Improves transparency and accountability

Barriers to public participation

1. Finding out about opportunities to comment
2. Finding the time to engage
3. Having relevant understanding of the issues or processes involved

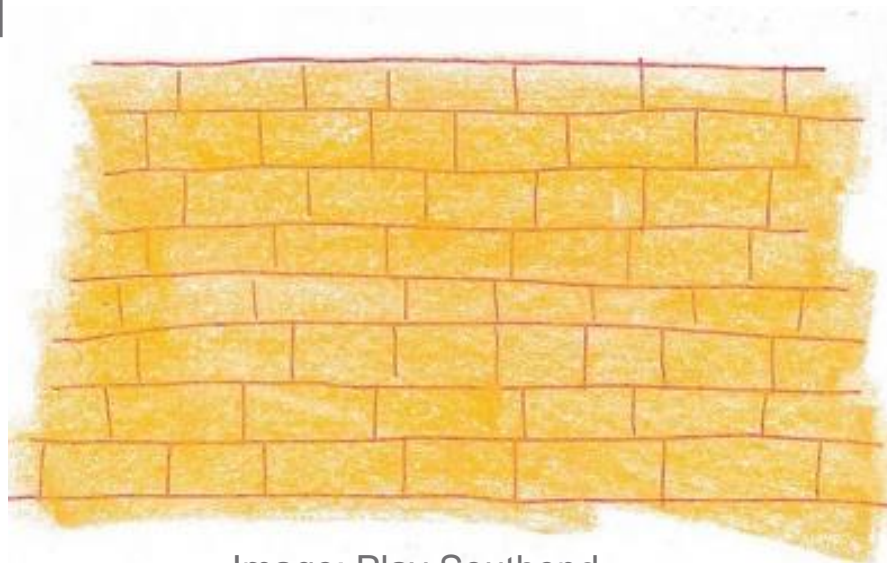


Image: Play Southend



CURRENTLY VIEWING: [Home](#) » [Have Your Say](#)

Have Your Say

A community guide to influencing environmental outcomes

[View current opportunities to have your say now](#)

Law and policy has a critical role to play in the sustainable management of the environment. Successful environmental policy depends on good regulation, which in turn requires community engagement. The importance of community engagement and public participation is recognised in many of our environmental laws. This resource aims to facilitate community engagement in environmental decision-making processes, and by doing so, help to achieve the objectives of environmental laws.

PAGES IN THIS SECTION:

[Have Your Say](#)

[Ongoing Opportunities to Have Your Say](#)

[Have Your Say Now - Current Opportunities](#)

[Featured Opportunity - Your Future Illawarra](#)

[How Can I Have My Say?](#)

[Fact Sheets - Have Your Say](#)

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There are opportunities for the public to contribute opinions and knowledge to:

- 1.** Shape environmental laws
- 2.** Shape plans and policies
- 3.** Respond to specific applications
- 4.** Monitor and enforce environmental regulations

Public participation requirements

- Can be mandatory
 - E.g. the requirements for consulting on applications for SSD
- Can be discretionary
 - E.g. the requirements for making SEPPs

Common methods of having your say

- Written submissions
- Appearing before a panel or inquiry
- Attending workshops and information sessions



Image: City of Calgary

GATHERING INFORMATION

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Importance of gathering information

Information was key in our issue. We needed to talk to the right people and ask the right questions. Policy and legislation had to be understood, or as best we could. Information from Council, correspondence and file notes in regards to the dealings with the sand mining company were obtained under access to information laws. The AustLII library was helpful in reviewing how the Land and Environment Court had determined other matters involving a sand mining operation. The internet was a valuable resource. I found conference notes posted by some of the government employees which gave insight into what was important to them. Information such as survey maps were obtained from the Historical Society. Basically we had enough information to support our position and have informed conversations with the various officers.

- Sue Chivers, Terara resident

Law and legal research

- **Legislation and regulations**

- State: <http://www.legislation.nsw.gov.au/> - browse In Force
- Federal: <http://www.comlaw.gov.au/> - Acts (current)

- **Case Law**

- State: <http://www.caselaw.nsw.gov.au/>
- Federal <http://www.austlii.edu.au/>

- **Legal research**

- EDO NSW Fact Sheets
http://www.edonsw.org.au/legal_help
- Legal Information Access Centre
<http://www.legalanswers.sl.nsw.gov.au/about/liac/>

Information from Parliament

- Hansard
 - MPs first speech
 - Second reading speeches for legislation
- Parliamentary Committees and inquiries
 - Various topics - Environment, Agriculture and Industry, Rural and Regional Affairs and Transport
 - Great source of information, and opportunity to Have Your Say
- Questions in Parliament
 - Questions without notice
 - Questions on notice



Information from Government

- Government websites
- Informal requests - Freedom of Information Officer
- Formal requests (fee)
 - Freedom of Information laws (Federal level)
 - GIPA laws (State/local level)
- Assistance
 - Office of the Australian Information Commissioner
<http://www.oaic.gov.au/>
 - Information and Privacy Commission
<http://www.ipc.nsw.gov.au/>

COMMENTING ON SSD APPLICATIONS



What makes this project SSD?

- This project is SSD because it meets the threshold test for extractive industries set out in the State and Regional Development SEPP.



New South Wales Government
NSW legislation

www.legislation.nsw.gov.au

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development applications when
development identified as State significant
development

24 Transitional provisions—certain other
existing development applications

25 Transitional provision—references to
former regional panel provisions

**Schedule 1 State significant
development—general**

**Schedule 2 State significant
development—identified sites**

**Schedule 3 State significant
infrastructure—general**

**Schedule 4 State significant
infrastructure—specified
development on specified land**

**Schedule 5 Critical State
significant infrastructure**

Schedule 6 (Repealed)

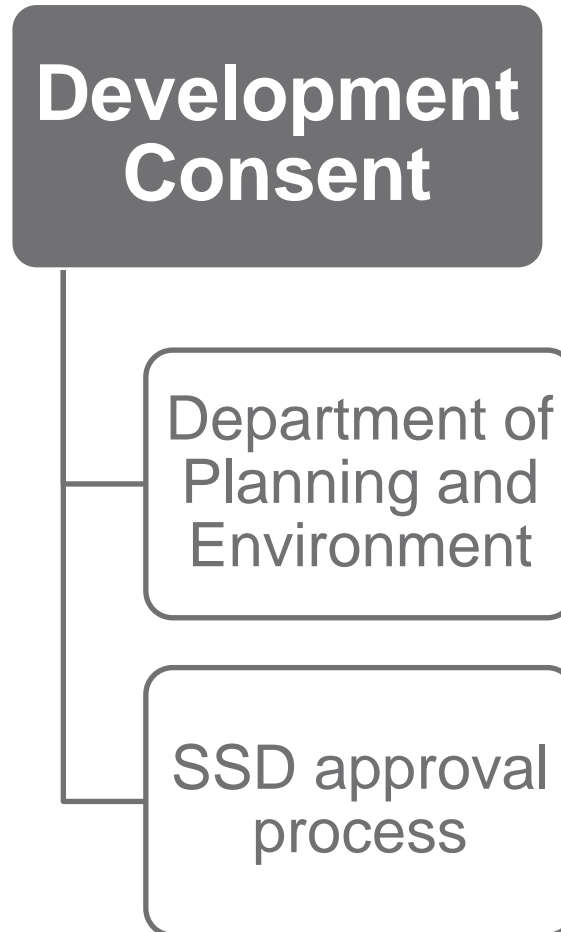
Historical notes

7 Extractive industries

- (1) Development for the purpose of extractive industry that:
 - (a) extracts more than 500,000 tonnes of extractive materials per year, or
 - (b) extracts from a total resource (the subject of the development application) of more than 5 million tonnes, or
 - (c) extracts from an environmentally sensitive area of State significance.
- (2) Subclause (1) (c) does not apply to extraction:
 - (a) by a public authority in maintenance dredging of a tidal waterway, or
 - (b) in maintenance dredging of oyster lease areas, or adjacent areas, in Wallis Lake.
- (3) Development for the purpose of extractive industry related works (including processing plants, water management systems, or facilities for storage, loading or transporting any construction material or waste material) that:
 - (a) is ancillary to or an extension of another State significant development project, or
 - (b) has a capital investment value of more than \$30 million.
- (4) This clause does not apply to development for the purpose of extractive industry or extractive industry related works that is part of a single proposed development if any other part of the development is State significant infrastructure.

8 Geosequestration

Approval process



Process for granting development consent – SSD

Secretary of Planning issues
Environmental Assessment
Requirements (also known as DGRs)

Proponent consults with local council,
government agencies and the
community in preparing an EIS

Proponent lodges the Application and
EIS

Department exhibits the Application
and EIS for minimum of 30 days



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graph TD; A[Submissions] --> B[Proponent receives submissions (may lodge a response)]; B --> C[Planning Department finalises assessment and consults local council and agencies on draft conditions of consent (if any)]; C --> D[Minister (or PAC) makes the decision];
```

Submissions

Proponent receives submissions (may lodge a response)

Planning Department finalises assessment and consults local council and agencies on draft conditions of consent (if any)

Minister (or PAC) makes the decision

Information about the project

- Development Categories
- State Significant Sites
- Planning Agreements
- On Exhibition
- Determinations
- Recommendation Made
- Help
- Lodge Online

Search Projects

Project Title or Location Name

Local Government - All

Site Type - All

Assessment Type - All

Status - All

Decider - All

Date Determined

From: to:

(Leave blank for any dates)

Search

Bobs Farm Sand Extraction

Bobs Farm Sand Project

DGRs Issued

Proposed sand mine off Nelson Bay Road at Bobs Farm. Proposed extraction of sand products providing applications for landscape, sports field top dressing, construction, fracking sand, bulk earthworks, bulk filling and glass manufacturing. Estimated yearly production is 750,000 tonnes/year. Potential excavatable resource is 10M tonnes at -15m AHD.

Access to the mine is to be off Nelson Bay Road and egress from the site will be onto Marsh Road and then back onto Nelson Bay Road.

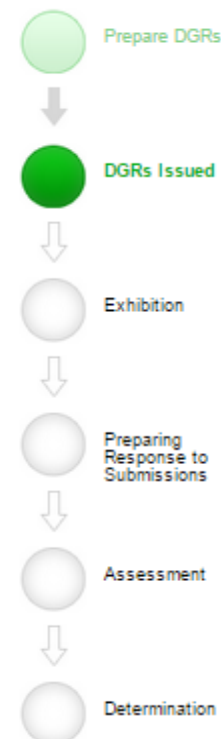
Buffers to all external boundaries is part of the proposal.

Attachments & Resources

- Request for Director-General's Requirements (6)
 - Bobs Farm Sand Project - Request for DGRs - Cover Letter.doc (354.9 KB)
 - Bobs Farm Sand Project - Request for DGRs - Flora and Fauna Survey.pdf (978.1 KB)
 - Bobs Farm Sand Project - Request for DGRs - Regional Context.pdf (144.1 KB)
 - Bobs Farm Sand Project - Request for DGRs - Site Plan (with aerial).pdf (2.453 MB)
 - Bobs Farm Sand Project - Request for DGRs - Site Plan.pdf (489.2 KB)
 - Bobs Farm Sand Project - Request for DGRs - Supplementary Info.pdf (3.754 MB)
- Director-General's Requirements (1)
 - Bobs Farm Sand Project - DGRs.pdf (135.4 KB)

Key dates and other information

Job Status	DGRs Issued Director General's Requirements for the environmental assessment (to be prepared by the proponent) have been issued for the project
Assessment Type	SSD
Project Type	Mining, Petroleum & Extraction > Extractive Industries
Application Number	SSD-6395



Environmental Assessment Requirements (DGRs)

- The EIS for this project must address:
 - Land and water resources
 - Biodiversity
 - Heritage
 - Traffic and transport
 - Air quality and greenhouse gases
 - Noise and visual impacts
 - Waste and hazards
 - Social and economic impacts

The Environmental Impact Statement

- In addition to addressing the DGRs, the EIS must include:
 - 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 it out,
 - a full description of the development,
 - a general description of the environment likely to be affected by the development, together with a detailed description of those aspects of the environment that are likely to be *significantly affected*,
 - the likely impact on the environment of the development,
 - a full description of the measures proposed to mitigate any adverse effects of the development,
 - a list of any approvals that must be obtained under any other Act or law,
 - the reasons justifying the carrying out of the development in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development.

Commenting on development applications

- You have the right to lodge a submission during the exhibition period.
- You can lodge a submission direct from the Department of Planning website
- You are commenting on the development application and associated documents, including an environmental impact statement (EIS).
- The minimum exhibition period is 30 days, but sometimes a longer period is allowed – you can ask the Department of Planning and Environment to consider extending the exhibition period.

Gathering evidence

- Support your claims with evidence
 - photographs and videos
 - collecting physical evidence such as water samples
 - note-taking
 - collecting documentation relevant to the issue
 - Reports from experts e.g. ecologists, hydrologists
 - legal research
- Don't trespass!



Image: Michael L. Baird

Building support

- Do other government departments or NGOs have an interest in this development?
 - Pollution - Ministry of Health and EPA
 - Water use - Office of Water
 - Catchment impacts - Local Land Services
 - Local Council
 - LALC
 - Proximity to school – Department of Education & Communities
 - OEH- Threatened species



Image: Phil Spark

Seeking funding from the proponent

- Ask the proponent for money to engage independent experts to assist you to respond to the EIS. This has happened a few times in NSW
 - Maules Creek Community Council got \$10,000 from Boggabri Coal to respond to the EIS for a proposed expansion of mining operations in the Pilliga
 - Bulga Milbrodale Progress Association got \$40,000 from Rio Tinto to respond to the EIS for a proposed expansion of mining operations in the Hunter Valley

TIPS ON BEING EFFECTIVE

EDDO

Writing an effective submission

- Introduce yourself or your group. What is your background and experience?
- Explain why are you interested in and how you will be affected by the development.
- Personalise the submission – it's OK to sign pro forma submissions, but ensure you personalise it a bit.
- Talk about how the proposal will affect
 - you;
 - the environment;
 - the local economy;
 - social factors.

Writing an effective submission

Read proposal and supporting documents



Identify key issues/concerns



Clearly set out your concerns and support with facts/evidence



Tell the decision maker what you want them to do



Submit before deadline or request extension

Insider tips

Keep submissions on-topic. Give insights into analysis or experiences from elsewhere that make your case. Point to innovative ideas. Make your submission short and punchy. Get the reader engaged early. Be objective and outcome focussed. Have a civilised and interesting conversation. Include a summary at the top of your submission. Use headings within your submission to structure your argument. Use clear language. One idea per paragraph. Put your idea in the first sentence, then explain it in the rest of the paragraph. Think about your strategy. What will motivate people?

- Tom Grosskopf, Director Metropolitan Branch, Regional Operations, Office of Environment and Heritage

Insider tips

It is helpful to council if you can put forward a realistic alternative. For example, say that you are opposed to a development of this scale, and that you would like to see a smaller alternative. Give councillors a way forward that is workable and acceptable.

- Simon Clough, Deputy Mayor, Lismore City Council

Insider tips

Offer constructive criticism. Keep to the topic and be concise in your arguments. Council officers sometimes have to sift through hundreds of letters giving feedback. Short, relevant, and timely points of view are appreciated and have a better chance of being prioritised.

Earn your right to criticise. This means your arguments need to be validated by good quality research and understanding of the subject area which you seek to influence. Make reference to key documents to support your argument rather than relying on personal opinion or hearsay.

- Dr Jenny Scott, Sustainability Program Leader, Ku-ring-gai Council

Follow up on your submission

Arrange a meeting with the Department

There is no substitute for a face-to-face meeting, even if you have already made a written submission. Try to meet with the Department to discuss your submission. Have they read it? What do they think? Get some feedback about the effectiveness of your submission. This meeting is a second opportunity for you to explain your position, and respond to what the Department thinks about it.

- Warwick Giblin, Environmental & Social Adviser,
OzEnvironmental Pty. Ltd

Pro-forma submissions

Writing submissions is not a popularity contest. Decision-makers will take a good idea from one person over a bad idea from many people every day. Pro-forma submissions can be effective at the start of a campaign, for example if you are trying to change the views of politicians so that they understand the depth of feeling across a community that an idea is not supported.

*However, you need to follow this up by writing your own submission to engage people and tell them what idea would be better. So, pro-forma **then** written submission.*

- Tom Grosskopf, Director Metropolitan Branch, Regional Operations, Office of Environment and Heritage

Appearing before a panel/inquiry

- Keep in mind the terms of reference
- You may need to register your intention to address the panel beforehand
- Stick to any time limits
- Speak clearly and try not to speak too fast
- Practise beforehand
- Dress formally and be on time



Image: SIAcademy

Insider tips

Planning Assessment Commission Meetings & Hearings

Public meetings

The purpose of a public meeting is to allow the PAC to hear from people interested in the proposed development in the context of the Director-General's Environmental Assessment Report and Recommendations before a decision is made on the application. Therefore people should look at these before attending a public meeting. Do these documents actually address your concerns? If not, where are the shortfalls and inadequacies? The PAC also wants people to look at the approval conditions proposed by the Department. Have your concerns been adequately covered and reflected in those conditions?

Insider tips

Public hearings

Public hearings generally occur as part of a review of a major development proposal. The purpose of a public hearing is to allow interested parties, particularly those who are potentially affected by the development, with an opportunity to present their views to the PAC. The scope of what can be discussed depends on the terms of reference for the review and the public hearing. The review and public hearings are part of the assessment process. The PAC review report and recommendation will be referred back to the Department for it to finalise its assessment of the proposal.

- Paula Poon, Director, Commission Secretariat, Planning Assessment Commission

Attending workshops and information sessions

- There may not be a formal opportunity to give feedback but presenters often get a feel for public opinion at these sessions
- Take this opportunity to learn as much as you can about the proposal by asking questions and taking notes
- There is often a formal opportunity to have a say later on

**IF APPROVAL IS
GRANTED**



If development is consent is granted...

- You may be able to challenge the approval
 - Merit appeal
 - Judicial review
- You can monitor the development to ensure compliance with the consent (conditions and any relevant licences)
- Report breaches to the consent authority e.g. the Department of Planning and Environment
- You can take third party enforcement action

Merit appeal: Protecting the village of Bulga from Warkworth coal mine expansion

- Challenge to Warkworth coal mine expansion based on impacts on:
 - Biodiversity
 - Community
- Community successful in its arguments
- Merit appeal:
 - Is not always available
 - Must be brought within 28 days of approval



Merit appeal – Gerroa Sand Mine



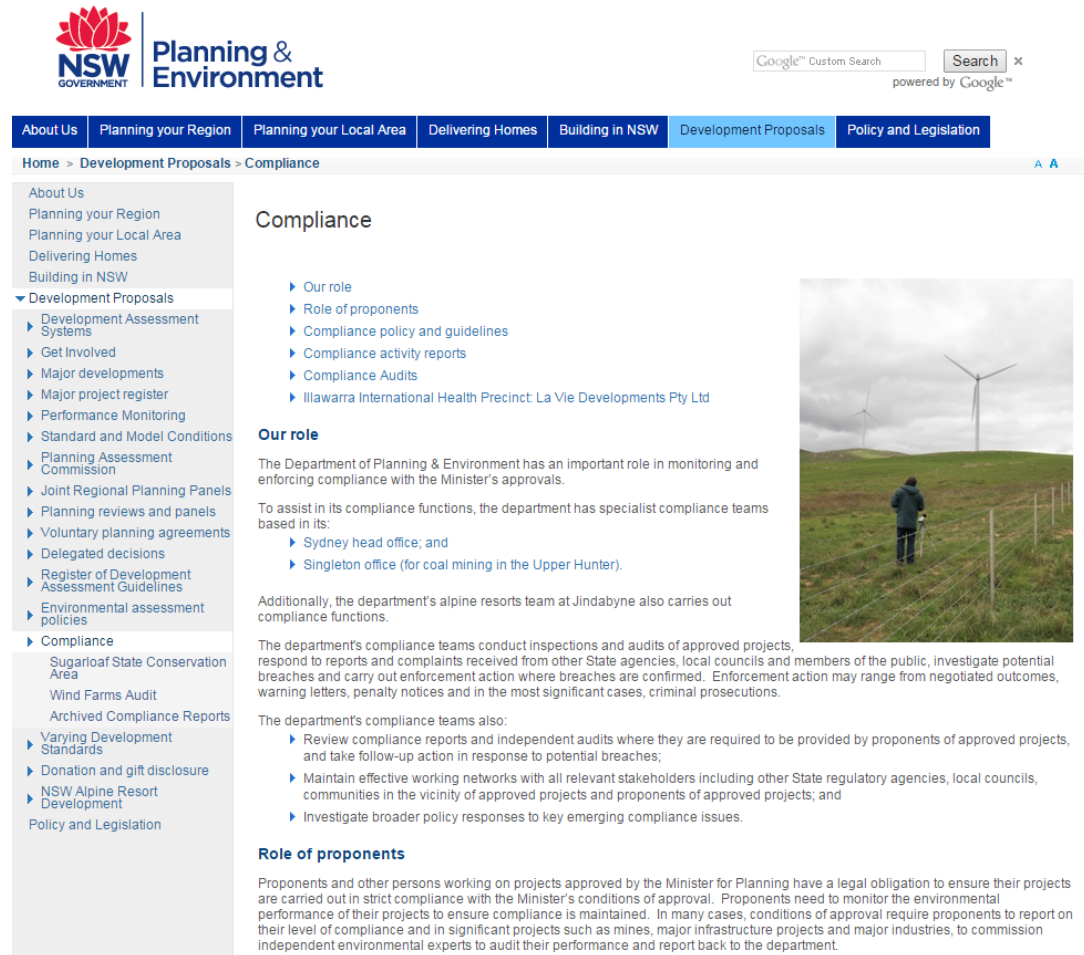
Judicial Review: The Gloucester Gas Project



Image: Kate Ausburn

Reporting breaches of development consent, mining lease or pollution licence

- If you are aware of breaches contact the relevant department
 - Development consent: Planning Department
 - Mining lease: Resources and Energy
 - Pollution Licence: EPA
 - Water Access Licence: Office of Water
- Provide evidence of breach – but don't trespass



The screenshot shows the NSW Planning & Environment website. The header includes the NSW Government logo and the department name. A navigation bar contains links: About Us, Planning your Region, Planning your Local Area, Delivering Homes, Building in NSW, Development Proposals, and Policy and Legislation. The 'Development Proposals' link is active, leading to a sub-menu with 'Compliance' selected. The 'Compliance' section is titled 'Compliance' and lists several items: Our role, Role of proponents, Compliance policy and guidelines, Compliance activity reports, and Compliance Audits. A link to 'Illawarra International Health Precinct: La Vie Developments Pty Ltd' is also present. Below this, the 'Our role' section states that the department has an important role in monitoring and enforcing compliance with the Minister's approvals. It mentions that the department has specialist compliance teams based in its Sydney head office and a Singleton office for coal mining in the Upper Hunter. Additionally, the department's alpine resorts team at Jindabyne also carries out compliance functions. The 'Role of proponents' section states that proponents have a legal obligation to ensure their projects are carried out in strict compliance with the Minister's conditions of approval. It lists several requirements: Review compliance reports and independent audits where they are required to be provided by proponents of approved projects, and take follow-up action in response to potential breaches; Maintain effective working networks with all relevant stakeholders including other State regulatory agencies, local councils, communities in the vicinity of approved projects and proponents of approved projects; and Investigate broader policy responses to key emerging compliance issues. A photograph of a person standing in a field with wind turbines in the background is shown on the right side of the page.

Civil enforcement: Wallerawang power station



Image: picsbyclive

Summary

- Keep on top of opportunities to have a say by signing up to receive the EDO's weekly e-bulletin
- Use the Have Your Say tool on our website to navigate to opportunities to have your say and find information and tips on how to be effective



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Free initial legal advice, website, fact sheets and updates

- Free Environmental Law Line Monday-Friday
 - 1800 626 239
- Fact sheets and other resources
- Free weekly eBulletin – updates on environmental law, policy and decisions



Support our work

- Your support for EDO NSW will help us to:
 - Provide legal advice and representation
 - Promote changes to environmental laws
 - Provide community legal education
- Donations are tax deductible
- <http://www.edonsw.org.au/donate>