



### Meet our new Principal Solicitor, Elaine Johnson

I became the Principal Solicitor at EDO NSW in August 2016. As Principal Solicitor I supervise the litigation and advice team in all of the public interest environmental law matters that we take on for our many and varied clients.

I've always wanted to work at EDO NSW, because it's the only place where lawyers can truly practice *environmental* law. As a student I volunteered here to supplement my studies, and knew that I would one day come back. After spending some time in private practice and government, I was lucky enough to be able to volunteer in the Public Solicitors office in the Solomon Islands for 18 months through a volunteer placement with EDO NSW as the partner organisation. When I came back in 2011, I took up a position as a Solicitor, then a Senior Solicitor, and am now the Principal Solicitor.

I'm very proud to be part of an office that has such a long history of taking on the cases that test and progress the law, and is well known in the profession as the peak organisation for the practice of environmental law. The job we do is tough, we take on legally complex cases against opponents with very deep pockets – every case that we run is a David and Goliath battle. But, as an environmental lawyer, there's no more rewarding place to work!

2016 was typically challenging with litigation which included State and Federal challenges to environmental approvals for coal seam gas developments near the Pilliga State Forest in NSW and the Surat Basin in Queensland, a coal mine in the Blue Mountains, and the Barangaroo casino on Sydney's foreshore. We also took on enforcement proceedings to protect Aboriginal heritage in northern NSW, and helped protect habitat for the critically endangered Regent Honeyeater.

There have been many defining moments for me working for EDO NSW. One moment that had a big impact nationally was being part of the team that won the first legal challenge of the Federal Government's approval of the Adani Coal Mine in Queensland, the largest coal mine in the southern hemisphere. However, sometimes it's unexpected incidents that catch you by surprise and remind you why EDO NSW is so important. One moment that really struck me happened during a Court site visit on a case I was running against an open cut coal mine in the Hunter Valley. Ultimately, we successfully helped to protect the community from the mine. However, during the site visit, we took the judge to the home of an elderly man whose house was literally wedged between an open cut coal mine to the north, an underground mine to the west, and the proposed open cut to the south. The elderly resident was confronted by judges, lawyers for the mine and mining company representatives as he tried to tell the Court about how it felt to live with the mine's broken promises. After this interaction, we took the Court to view the garden that his wife had carefully tended to for the last 30 years, now overshadowed by a mine and covered in coal dust. It was a heartbreaking moment, and one that reminded me of the very reason we do the work that we do. It's about providing legal representation for the people, animals and places whose voices are all too often drowned out by those with deep pockets and easy access to the law.

# Helping Local Land Services and Council staff improve environmental outcomes

That's a wrap! Over the past four months we've run 13 environmental law professional development workshops for over 400 staff of Local Land Services (LLS) and local councils from Broken Hill to Ballina, Deniliquin to Bourke, and many places in between.

At the workshops, we discussed the legal framework for managing and protecting the environment, including laws that regulate biodiversity and native vegetation, planning and development, pollution, pests and weeds, and more. We also updated staff on the many law and policy changes currently underway.

The workshops were designed to contribute to better environmental outcomes by promoting rigorous decision-making processes and the use of compliance and enforcement provisions to achieve the objectives of environmental legislation.

The workshops were a hit. Participants reported that the workshops helped them feel more confident in utilising a range of legal tools to make informed decisions and to ensure compliance with the law. Participants recognised the important role that EDO NSW plays in making our laws accessible, with one participant saying *'Excellent, thank you for the opportunity to discuss and receive information that has had your expert analysis'*.



*Participants in the final professional development workshop in Wagga Wagga*

A big thank you to all who participated so enthusiastically in the workshops, and to our partners and hosts at councils and LLS who helped us to target the training and put the workshops together. The workshops were supported by the NSW Government through its Environmental Trust.

Due to the overwhelming success of the workshops we're happy to announce that we're planning to continue offering professional development workshops for staff of LLS and local councils.

If you're interested in knowing more, or would like to request training for yourself and your colleagues in 2017, contact us on 02 9262 6989 or [education@edonsw.org.au](mailto:education@edonsw.org.au).



# Northern Rivers Office 10th Birthday

A celebration of public interest environmental law in northern NSW



*EDO NSW Northern Rivers supporters*

While 2015 saw EDO NSW celebrate 30 years of defending the environment and advancing the law in NSW, 2016 saw us celebrate 10 years of our Northern Rivers office. The opening of the office was an important step for us to pioneer expert environmental legal services to rural, regional and remote communities.



*Sue Higginson, Jeff Smith, CJ Brian Preston and Jessica Wood at the opening of the Northern Rivers Office in 2006*

We have enjoyed tremendous support from the Northern Rivers community over the last 10 years, with many EDO NSW supporters hailing from the region.

Our current CEO, Sue Higginson, worked from this office for many years, most recently alongside Nina Lucas, one of our outreach solicitors. Over the years we've delivered targeted community legal education – including workshops, seminars, and publications – and provided clients in the region with legal advice and representation on many environment and planning law matters, all with the aim of protecting the outstanding Northern Rivers environment.

We were thrilled to celebrate our 10th anniversary with a screening of *Sonic Sea*, a film about noise impacts on our marine biodiversity, at the Star Court Theatre. We also took a trip down memory lane, including showing some local media coverage of our opening in 2006. A great time was had by all and we look forward to working closely with the Northern Rivers community in the coming decade.

We acknowledge and pay our respects to the Widjabul Wia-bul People of the Bundjalung Nation, on whose traditional lands our Northern Rivers office is located.



## Law of the Land, Rise of the Environmental Defenders

A book commissioned by EDO NSW and written by Murray Hogarth to celebrate 30 years of EDO NSW

This book details the rich history of EDO NSW and public interest environmental law across Australia and beyond.

*'In Sydney in 1981 a small group of people met to conceive a bold dream – that a system of law geared primarily to protect private property and individual freedom should be regularly used to protect the commons of mankind against the depredations of those very interests.'*

*This book traces, during the relatively short life of the EDO, truly remarkable changes in the nature of perceived environmental problems, in the horizons of concern, and in the range of possible legal reactions.*

*Like Shakespeare's veterans of Agincourt, (EDO's) staff and alumni are a happy few, not covetous for gold, who stand tip toe and strip their sleeves and show their scars when the EDO is mentioned. Murray Hogarth has caught their voices and celebrated their achievements. I join him in saluting them and wishing them more successes in a struggle that will never end while there is life and law on the planet we share.'*

– Hal Wootten AC QC – Patron, EDO NSW

**Order your copy online today [www.edonsw.org.au/lawofthelandpurchase](http://www.edonsw.org.au/lawofthelandpurchase) or using the order form on the back page of this newsletter.**

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## Your Say: Crown Casino, Barangaroo

### How does the community engage in the NSW planning system?

We recently asked 5,000 residents of the Balmain peninsula, who overlook the Barangaroo precinct (Sydney), if they were aware of the changes that have been happening in the Barangaroo precinct and whether they engaged in the decision making process for the approval of the Crown Casino.

As part of our ongoing work to help communities engage in the planning system we wanted to understand how this community participated in the high profile but complex planning decisions associated with Crown Casino, and how we can ensure people are better able to find out what opportunities exist to get involved.

We are delighted with the number of responses, and they are still coming in thick and fast. Here's what we can gather from the results so far.

45% of the community were aware of the changes that led to the public foreshore being replaced by the Crown Casino but only 2% of respondents supported the change.

The level of engagement in the community was reasonably high, with 46% of the community regularly participating in local planning decisions – but of course this still leaves a significant number who do not regularly engage.

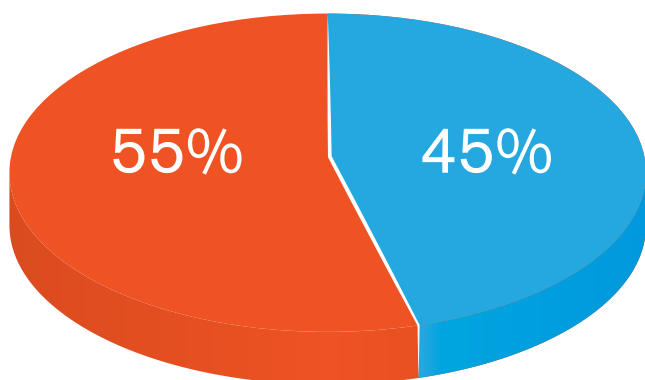
Our Have Your Say tool helps the community engage in a range of planning and environmental decisions. Feedback from this survey was that nearly 70% of the community would be keen to use the Have Your Say tool in future – this could help increase community engagement in this area by over 20%.

## How can you have your say on projects in your area?

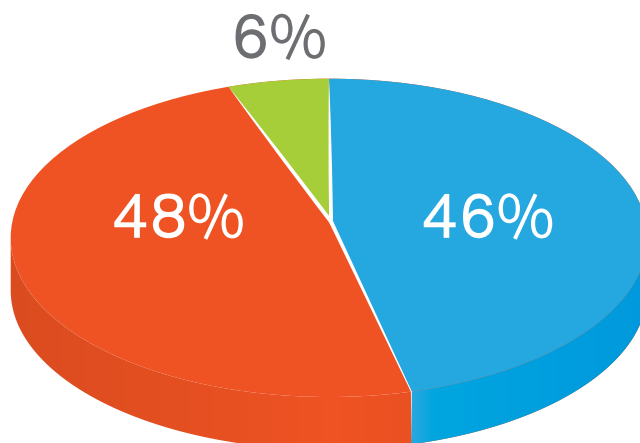
Visit our Have you Say website [www.edonsw.org.au/hys\\_have\\_your\\_say](http://www.edonsw.org.au/hys_have_your_say) to find out.

There was also very strong support from this community for maintaining the community's right to legal challenges of planning decisions where they think the law has been misapplied. In 2016, EDO NSW released a report on *Merits Review in Planning in NSW* highlighting that there are clear benefits to allowing third party merits reviews in relation to major projects in NSW. These benefits relate to improving the consistency, quality and accountability of decision-making in environmental and planning matters. In particular, merits review facilitates the development of an environmental jurisprudence, enables better outcomes through conditions, provides scrutiny of decisions and fosters natural justice and fairness. This results in better environmental and social outcomes and decisions based on ecologically sustainable development. You can read the full report on our website: [www.edonsw.org.au/merits\\_review\\_in\\_planning\\_in\\_nsw](http://www.edonsw.org.au/merits_review_in_planning_in_nsw).

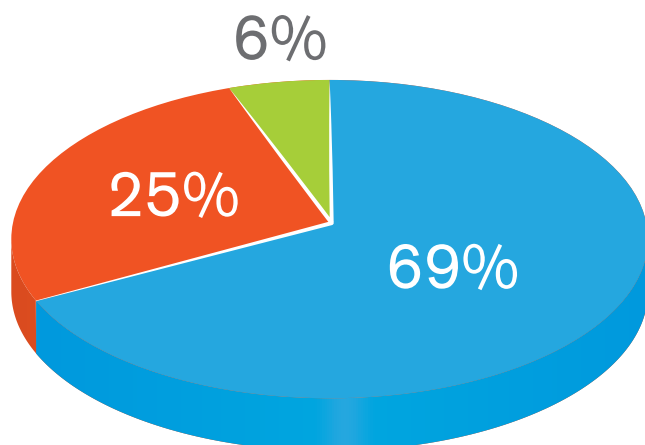
***Were you aware that the recent project modification allowed the casino to be built on land that was previously reserved for public foreshore?***



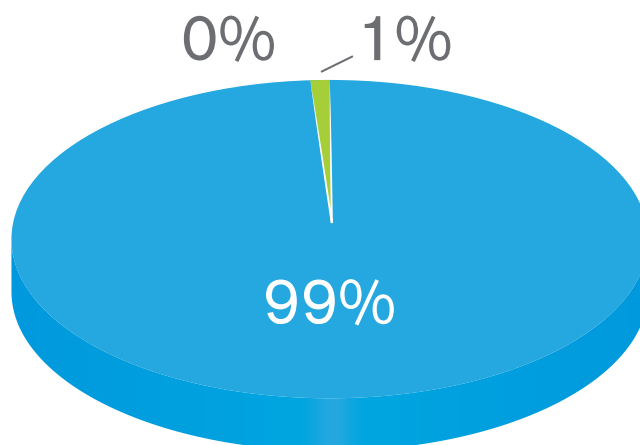
***Do you regularly participate in decisions about new developments?***



***Would you use our 'Have your Say' resources in the future?***



***Do you support our planning laws maintaining the community's right to challenge project developments where there is legal merit?***



■ Yes ■ No ■ Unsure



## Case Update: Crown Casino, Barangaroo

Just before Christmas we received judgment in *Millers Point Fund Inc v Lendlease Millers Point Pty Ltd & others* – the community's Land and Environment Court challenge to the Crown Casino at Barangaroo.

On behalf of Millers Point Fund Inc, we challenged the NSW Planning Assessment Commission's (PAC) approval that allowed the Crown Casino development at Barangaroo in Sydney to be located on land previously set aside for a public park. This was a complex case that related to the PAC's power to modify development approvals under the controversial Part 3A provisions in the planning legislation. The community group argued that the PAC did not apply the law properly when approving the casino's location.

Although the Court agreed with many of our arguments, it ultimately upheld the modification and subsequent Casino consent, allowing the Casino to be built on the foreshore at the site. You can find a link to the judgment on our website: [www.edonsw.org.au/current\\_cases](http://www.edonsw.org.au/current_cases).

The Department of Planning and Environment has recently announced proposed changes to the planning laws which will remove the provisions that allow modifications to be approved under Part 3A, as was the case here.

We are grateful to barristers Michael Hall SC, Mark Seymour, Craig Lenehan and Jane Taylor for their assistance in this matter.



*Artist's impression.*

## Case Update: CSG in Queensland

On behalf of Western Downs Alliance, we challenged the Federal Minister for the Environment and Energy's approval of Santos's GLNG Gas Field Development Project in the Surat Basin, Queensland. The challenge was on the basis that the approval allowed millions of litres of coal seam gas (CSG) waste water from the project to be released into surface water systems, such as the stunning and environmentally important Dawson River, without having assessed the environmental impacts this would have.

The case was scheduled to be heard by the Full Bench of the Federal Court on Monday 13 February 2017. However, in December 2016, the Minister and Santos agreed to amend the approval by adding important conditions: that the project is prohibited from discharging CSG waste water to any watercourse; and that any proposed release in the future must be assessed by the Minister.

By taking legal action, the Alliance has ensured that there will be no release of waste water to surface waters under this project and that any future proposal will require a separate application and assessment.

# Challenging times ahead for environmental protection in NSW

2016 saw some major changes to environmental legislation in NSW – what does it mean for the future of our environment?



If you follow our e-Bulletin and blogs, you will already know that the last few months of 2016 saw significant legislative and policy change in NSW.

The *Biodiversity Conservation Bill 2016* and the *Local Land Services Amendment Bill 2016* were both passed by Parliament on 17 November 2016. They will repeal and replace several key environmental laws, including the *Threatened Species Conservation Act 1995*, the *Native Vegetation Act 2003*, the *Nature Conservation Trust Act 2001* and parts of the *National Parks and Wildlife Act 1974*. Further details, including draft land-clearing codes and Regulations, are likely to be exhibited in early 2017. In the lead-up to the Bills being introduced to Parliament, we argued that these reforms represent a serious retrograde step in environmental protection in NSW. While much of the detail on how the new legislation will be implemented is yet to be determined, we already know that, when the new laws come into force, NSW will no longer have a ban on the broadscale clearing of native vegetation.

The *Crown Land Management Bill 2016* passed through Parliament on 14 November 2016. EDO NSW supports work to clarify and harmonise the previously complex laws on managing Crown lands to ensure the environmental and cultural values of Crown lands are recognised and protected. However, throughout the Crown lands review process, we identified concerns in relation to the management of Travelling Stock Routes and the recognition of the important role they play in protecting biodiversity. Another concern was the potential for Crown land to be converted from community to operational land, thereby weakening environmental protections. We will continue to provide communities with information and advice on these issues as the new laws are rolled out.

On a more positive note, 2016 saw some progress towards improved consideration of climate change in planning law. In July 2016 we launched *Planning for Climate Change: How the NSW planning system can better tackle greenhouse gas emissions*, available on our website: [www.edonsw.org.au/climate\\_change\\_energy\\_policy](http://www.edonsw.org.au/climate_change_energy_policy). The report has been well-received and we continue to press its 14 reform recommendations. Encouragingly, in November 2016, the NSW Government announced an 'aspirational target' of net-zero greenhouse gas emissions by 2050. The burgeoning wind power sector also received more clarity around the environmental standards it is required to meet, with the December release of the NSW Wind Energy Framework. The industry had been concerned about the lack of certainty for a number of years and the barriers it created to the development of wind power in NSW. Our detailed submission on the draft wind guidelines emphasised the need for planning laws to assist a rapid transition to zero-carbon energy.

2017 will be an important year for environmental law as we seek to ensure we get the best environmental outcomes possible under these new laws. For more information on these changes and other law reform currently underway, visit our website: [www.edonsw.org.au/law\\_reform](http://www.edonsw.org.au/law_reform).

**STOP PRESS:** The NSW Government has just announced the new tranche of proposed changes to our planning laws. We are currently reviewing the proposals and will have more information on this available soon.

# Law of the Land, Rise of the Environmental Defenders

Order your copy today!

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**Thank you for your ongoing support. You really are making a difference.**

NSW



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*EDO NSW recognises the traditional owners and custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander elders past and present, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through law.*

