



# Have Your Say & Enforce Environmental Laws

Gloucester

9 June 2015

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# About EDO NSW



## Free initial legal advice, website, fact sheets and updates

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





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 - Senate Inquiry - Landholders' Rights to Refuse \(Gas and Coal\) Bill 2015](#)

[Featured Opportunity - Landholder compensation for gas exploration and production](#)

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

[Fact Sheets - Have Your Say](#)

[Tell Us What You Think](#)

## 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
- [www.edonsw.org.au/donate](http://www.edonsw.org.au/donate)

## Presentation overview

- A decision has been made – what next?
- Is legal challenge available?
- Monitoring and enforcing environmental laws



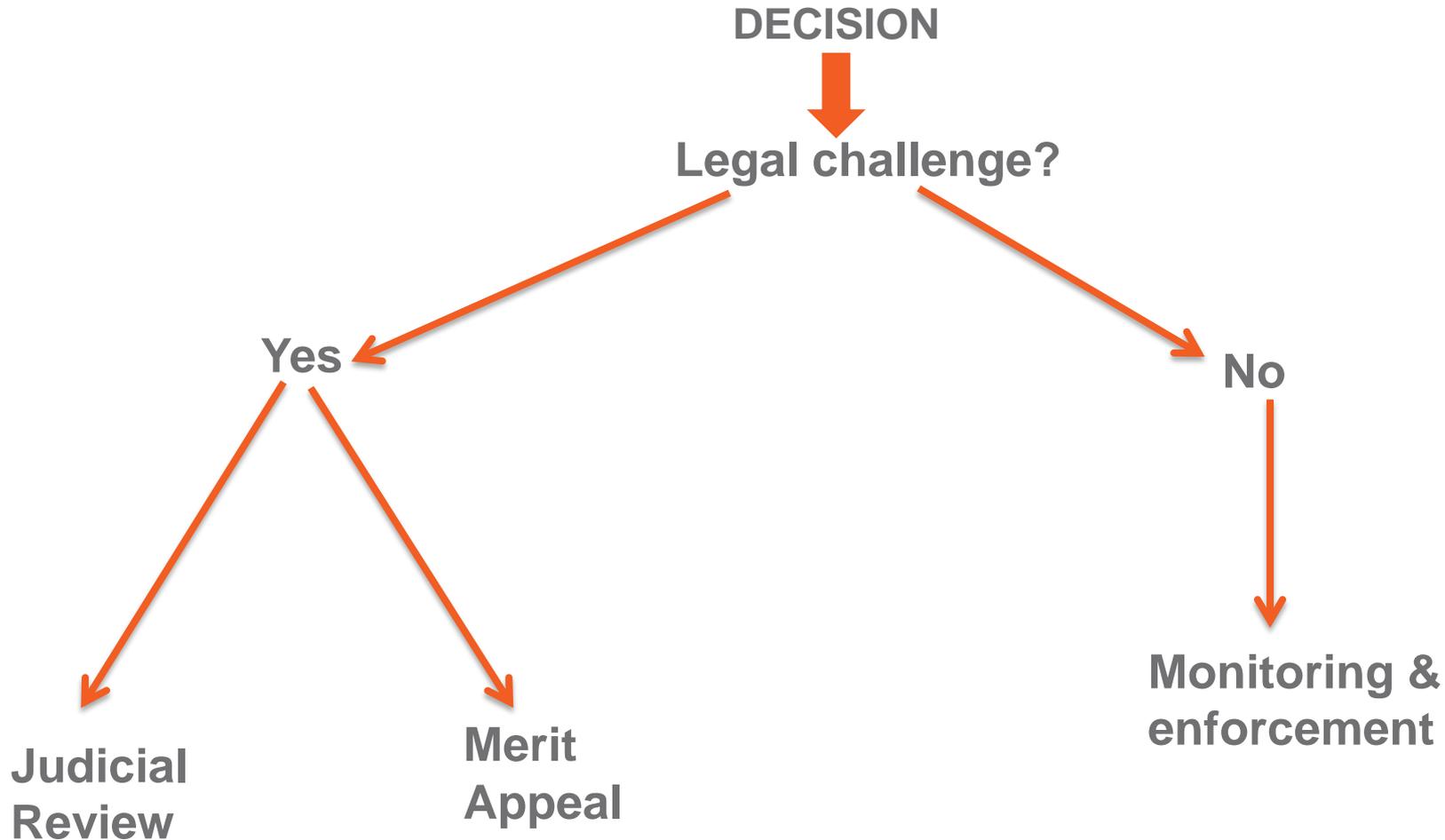
## Information, not advice

- 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.

**A DECISION HAS BEEN  
MADE – WHAT NEXT?**

**EDDO**

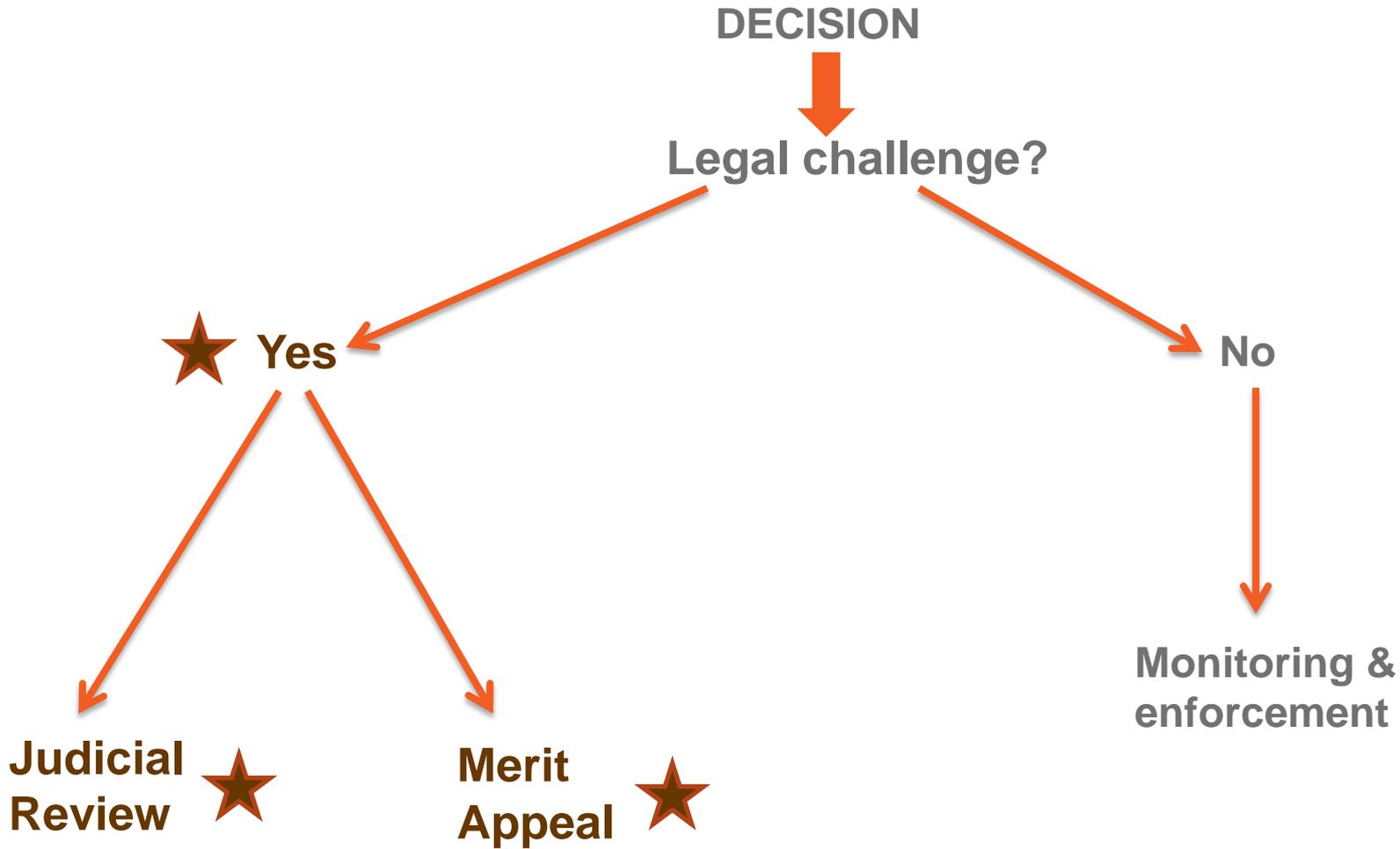
# A decision has been made – what next?



**IS LEGAL CHALLENGE  
AVAILABLE?**

**EDDO**

# Is legal challenge available?



# Can the decision be challenged in court?

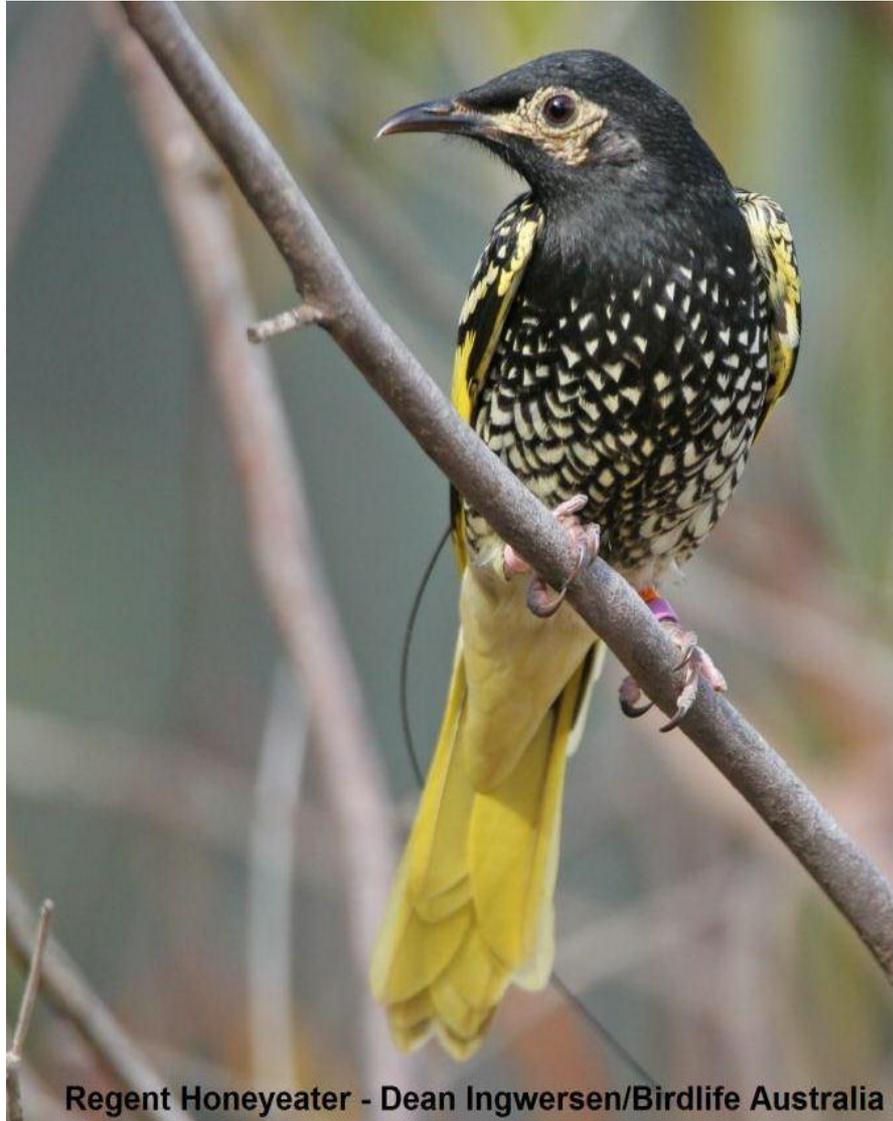
- Act quickly & seek legal advice
- Development consent under EP&A Act
  - Merit appeal available for objectors against some types of development approval within 28 days
  - Judicial review available within 3 months
  - No appeal available for granting of a mining or CSG title



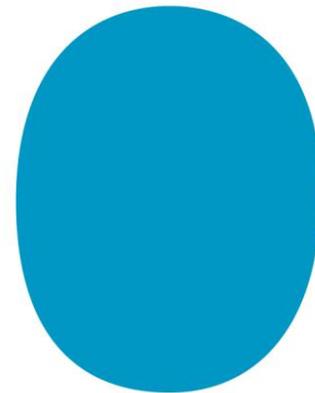
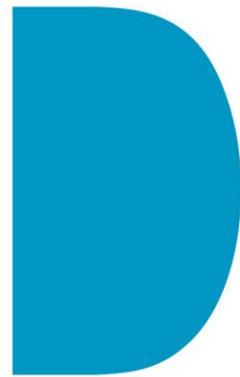
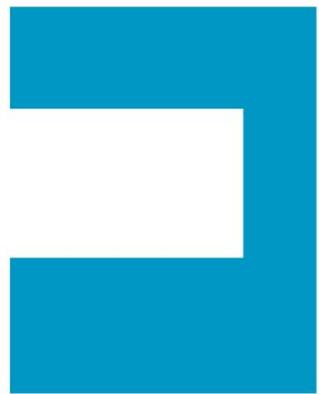
# Merit appeal: Warkworth coal mine expansion



# Judicial Review: The Regent Honey Eater



# MONITORING AND ENFORCING ENVIRONMENTAL LAWS



# Key Questions

1. What has been approved?
2. Who gives the approval & who enforces the laws?
3. What are the limits of approval?
4. What information can I access?
5. How can the responsible authority enforce the law?
6. How can I enforce the law if the responsible authority won't?

# 1. What has been approved?

- There may be one or a number of approvals for a single project:
  - Development consent
  - Water licence
  - Mining or CSG title
  - Pollution licence
  - Property Vegetation Plan or development consent to clear native vegetation
  - Aboriginal Heritage Impact Permit

## 2. Who gives the approval & who enforces the laws?

- EPA is the lead regulator for CSG so contact them in the first instance
- Development consent
  - Granted by NSW Minister for Planning or PAC
  - Enforced by NSW Department of Planning and Environment
- Mining and CSG titles
  - Granted by NSW Minister for Resources and Energy
  - Enforced by Division of Resources and Energy and Office of CSG
- Pollution licence
  - Granted and enforced by EPA
- Water Access Licence
  - Granted and enforced by NSW Office of Water
- Aboriginal Heritage Impact Permits
  - Granted and enforced by OEH

### 3. What are the limits of approval?

- There are penalties for failing to comply with the conditions of an approval
- Report breaches to the responsible authority
- The responsible authority may take enforcement action, but they cannot be forced to
- You may be able to take civil enforcement action if the responsible authority won't



### 3. What are the limits of approval?

- What conditions have been placed on the development consent?
  - Requirement to offset impacts on biodiversity
  - Limits on noise and dust generated
  - Specified hours of operation
  - Extent of development
- What conditions have been placed on the mining/CSG title?
  - Restrictions on activities that can be undertaken
  - Restrictions on locations where activities can be undertaken

### 3. What are the limits of approval?

- What limits have been placed on the pollution licence?
  - Limits on type and level of pollutants that can be discharged
  - Requirements for disposal of waste
  - Pollution reduction program
- What limits have been placed on the water access licence?
  - Limit on amount of water that can be taken
  - Specified methods of extraction
  - Specified locations for extraction
- What conditions have been placed on the AHIP?
  - Locations that are off-limits
  - Specified methods of excavation

## 4. What information can I access?

- Land and Water Commissioner
  - Provides independent advice to landholders, resource companies, the community and government on mining and coal seam gas activities in NSW
  - Contact Jock Laurie:
    - Phone: 02 6391 3429
    - Email: [commissioner@landandwater.nsw.gov.au](mailto:commissioner@landandwater.nsw.gov.au)
    - <http://www.trade.nsw.gov.au/contact-us/commissioners/land-and-water-commissioner>



## 4. What information can I access?

- Gloucester Community Project Officer
  - Assists community with access to information from relevant agencies involved in coal and petroleum activities
  - Available for face to face meetings in Gloucester
  - Phone: 0437 683 217, Email: [clo@industry.nsw.gov.au](mailto:clo@industry.nsw.gov.au)
  - <http://www.resourcesandenergy.nsw.gov.au/landholders-and-community/coal-seam-gas/community/gloucester>



## 4. What information can I access?

- Gloucester Dialogue
  - Chaired by the Land and Water Commissioner
    - Gloucester Shire Councillors and officers,
    - Independent community members,
    - Senior AGL representatives, and
    - Senior officers from the Office of CSG, Division of Resources and Energy, EPA, Office of Water and Department of Planning.
  - Monthly ‘Communique’ reporting on meetings
  - Contact local Gloucester Shire Councillors for more information
  - <http://www.resourcesandenergy.nsw.gov.au/landholders-and-community/coal-seam-gas/community/gloucester>

## 4. What information can I access?

- 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/>

# 4. What information can I access?

- Information from Government
  - Department of Planning and Environment Major Projects website – development consent
  - Links to other assessments

The screenshot displays the 'Major Project Assessments' website interface. On the left, there is a sidebar with navigation links: Development Categories, State Significant Sites, Planning Agreements, On Exhibition, Determinations, Recommendation Made, Help, and Lodge Online. Below this is a 'Search Projects' section with filters for Project Title or Location Name, Local Government, Site Type, Assessment Type, Status, and Decider, along with a 'Date Determined' range selector and a 'Search' button. The main content area shows the 'Gloucester Gas Project Concept Plan' with a 'Determination' status. It includes a description, a list of 'Other assessments against this site' (circled in red), and a list of 'Attachments & Resources' such as 'PAC Final Determination Report.pdf' and 'Final Instrument of Concept Plan Approval.pdf'.

## 4. What information can I access?

- Information from Government
  - Resources and Energy or Office of CSG website – exploration licence and mining/production lease

Home / Landholders & community / Coal seam gas / Gloucester Basin and PEL 285

- About the Office of Coal Seam Gas
- Groundwater Baseline Project
- The facts on CSG
- Protections
- Community
- Gloucester Basin and PEL 285**
- Gloucester Communications Project
- Fact sheets, maps, videos & links
- CSG media releases
- Contacts

### Gloucester Basin and PEL 285



#### On this page

- > Latest project update
- > Environment Protection Licence
- > Flowback water
- > Inspections and monitoring
- > Gloucester Gas Production Project: Stage 1 (not commenced)
- > Facts about the Waukivory Project
- > Produced Water Management Plan
- > Surface Water and Groundwater
- > Waukivory Pilot Project approval documents

#### Latest project update

29 April 2015

The Department received a request on the 26 April 2015 from AGL Upstream Investments Pty Ltd to allow the company to collect and analyse gas and water samples via the recommencement of pumping flow-back water for a limited period. On 29 April 2015, the Department authorised AGL Upstream Investments Pty Ltd to recommence pumping flow-back water at the Waukivory Pilot Project site in accordance with its current approval and other conditions. [Read the Department's letter of response to AGL](#) [45 KB PDF].

# 4. What information can I access?

- Information from Government
  - EPA website – pollution licence

### Environment protection licences

- + Licensing under the POEO Act
  - Guide to licensing
  - Licence forms
  - Licence fees
- + Risk-based licensing
- + Load-based licensing
- + Emissions trading
- POEO Public Register
  - Terms of use: POEO public register
  - Search for licences, applications and notices
  - Search for penalty notices
  - Search for prosecutions and civil proceedings
  - Enforceable undertakings
  - Exemptions and approvals
  - Licensing FAQs
  - List of licences
  - Unlicensed premises still regulated by the EPA

[Home](#) > [Environment protection licences](#) > [POEO Public Register](#) > [Search for licences, applications and notices](#)

## Licence summary

[Search Again](#) [Return to Previous Page](#)

**Summary Licence No: 20358**

[View this licence](#) (PDF document 193 kb)

**Licence holder:** AGL UPSTREAM INVESTMENTS PTY LIMITED  
**Premises:** Gloucester Coal Seam Gas Project  
Bucketts Way, GLOUCESTER, NSW, 2422  
**LGA:** GLOUCESTER **Catchment:** Hunter

**Administrative fee:** \$4,760.00  
**Licence status:** Issued  
**Activity type:** Petroleum exploration, assessment and production  
**Licence review:** Due date 06 Aug 2019  
**Pollution incident management plan:** Yet to be confirmed

### Applications

Number	Application type	Current status	Date received
<a href="#">1525990</a>	s.58 Licence Variation	Issued	10 Sep 2014
<a href="#">1527948</a>	s.58 Licence Variation	Issued	15 Jan 2015
<a href="#">1530076</a>	s.58 Licence Variation	Issued	12 Mar 2015

## 4. What information can I access?

- Information from Government
  - Office of Water website – Water Access Licence Conditions
  - Note – you may need to access the WAL register through Land and Property Information for full details (may incur fees depending on what you're looking for)

### Water Access Licence Conditions Register

This Register provides access to the current and legally enforceable conditions for water access licences using a **WAL Number**.

**Note:** some information about the relevant water access licence is provided in these searches for contextual purposes and may not always be up to date. If you require full and up to date details of the WAL, including current holders, share and extraction component details and encumbrances, you should undertake a search of the [WAL Register](#).

Note that information on licences under the *Water Act 1912* is not available via this search.

Water Access Licence No.		Search	
or		WAL <input type="text" value="19521"/>	
NSW Office of Water Reference No.		▼ AL <input type="text"/>	
		<input type="button" value="Search"/> <input type="button" value="Clear"/>	
WAL No.	Water Source	Share Components	Details
19521	Avon River Water Source	32.00	<input type="radio"/>
Rows 1 to 1 of 1 rows.			

**Disclaimer:** The NSW Office of Water does not warrant the data is current nor does it warrant that the data or the data capturing processes are free from corruption or error.

**Privacy:** The information provided is limited to meet the requirements of section 57 of the *Privacy and Personal Information Act 1998*.

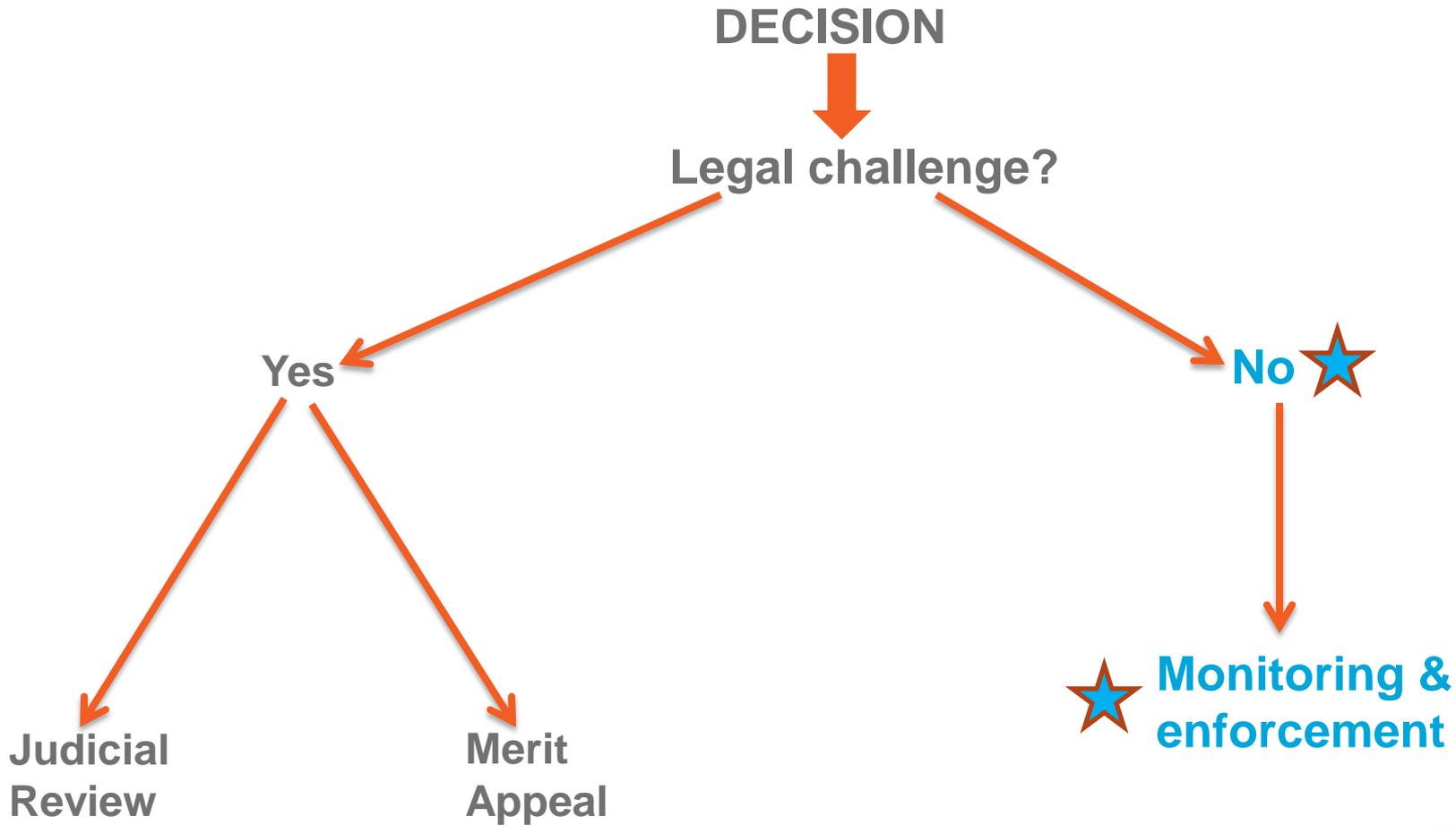
**More information:** Should you require further information or technical assistance, please submit your request to [water.enquiries@dpi.nsw.gov.au](mailto:water.enquiries@dpi.nsw.gov.au) or contact 1800 353 104.

## 4. What information can I access?

- 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



# What if the developer doesn't comply with the approval conditions or breaches the law?



## 5. How can the responsible authority enforce the law?

- The responsible authority may investigate non-compliance with the approval/licence/conditions and issue orders or penalty notices, or take civil or criminal enforcement action in court.
- You can help the responsible authority to enforce non-compliance by reporting breaches to them and asking them to enforce these breaches.
- However, the law does not require a responsible authority to investigate or take enforcement action.
- If the responsible authority won't take action, you may be able to.

## 5. How can the responsible authority enforce the law?

- Breach of development consent
  - Developers must comply with conditions of development consent
  - Conditions make up part of the consent
  - The responsible authority can issue warnings or penalty notices, or take enforcement action
  - Civil enforcement action is available to remedy or restrain the pollution of water without a licence or breaching a licence
  - You need evidence of the breach



Image: Jeremy Buckingham

## 5. How can the responsible authority enforce the law?

- Breach of CSG title
  - CSG operators must comply with conditions of their CSG title
  - If they don't, the Minister for Resources & Energy can suspend or cancel their title
  - The operator must be notified and given a chance to make representations before suspension or cancellation
  - No civil enforcement



## 5. How can the responsible authority enforce the law?

- Water pollution
  - It is unlawful to cause water pollution but pollution licences can authorise water pollution
  - Polluters need to notify the EPA of serious pollution incidents
  - The EPA can negotiate outcomes, issue orders or take enforcement action
  - Civil enforcement action is available to remedy or restrain:
    - pollution of waters without a licence
    - breaches of a pollution licence
  - You need evidence of the pollution



## 5. How can the responsible authority enforce the law?

- Breach of Water Licence
  - CSG operators must comply with their water access licence and the Water Act/Water Management Act
  - The Office of Water can issue orders or penalty notices, or take enforcement action
  - Civil enforcement action is available to remedy or restrain a breach of the law
  - You need evidence of the breach



## 5. How can the responsible authority enforce the law?

- Breach of AHIP
  - CSG operators must comply with any AHIP issued to them
  - The Office of Environment & Heritage can suspend or revoke an AHIP or take enforcement action
  - Civil enforcement action is available to remedy or restrain a breach of the law
  - You need evidence of the breach



## 5. How can the responsible authority enforce the law?

- Who to contact
  - Breaches of development consent and conditions
    - Department of Planning and Environment
    - 02 9228 6111
  - Breaches of mining and CSG titles
    - Division of Resources and Energy and Office of CSG
    - 1300 736 122
  - Pollution
    - EPA
    - 131 555

## 5. How can the responsible authority enforce the law?

- Who to contact
  - Breaches of water access licence
    - Office of Water
    - 1800 633 362
  - Destruction of Aboriginal heritage or breach of AHIP
    - Office of Environment and Heritage (Hunter Central Coast Region)
    - 02 4904 2590
- It may also be a good idea to contact the developer to notify them of any potential breaches – contact details will be on their website, or there may be a community contact line required as part of the approval

## 6. How can I enforce the law if the responsible authority won't?

- If the responsible authority fails to take action, you may be able to bring a case to enforce the law
- This is known as civil enforcement action
- This is not always available – it will depend on the law you are seeking to enforce



## 6. How can I enforce the law if the responsible authority won't?

- Gather evidence
  - It's important to be able to support your claims with evidence:
    - Taking photographs and videos
    - Collecting physical evidence such as water samples
    - Taking notes
    - Collecting documentation relevant to the issue
    - Legal research
- Don't trespass!



Image: Michael L. Baird

## 6. How can I enforce the law if the responsible authority won't?

- Civil enforcement: Maules Creek coal mine



Image: Phillip Spark

## 6. How can I enforce the law if the responsible authority won't?

- Civil enforcement: Georges River pollution



## So, if approval is granted...

- You can monitor the development to ensure compliance with the consent (conditions and any relevant licences/approvals)
- This will require:
  - Knowing what the limits of approval are
  - Having access to information including:
    - the conditions of consent
    - any reports released by the developer
    - independent evidence to establish a breach (water testing, noise testing, photographs etc.)

## Summary

- Get involved early in the decision-making process
- After the approval stage – find out whether the approval can be legally challenged
- Ask yourself the key questions
- Monitor the development to ensure compliance with the consent
- Report breaches to the consent authority and regulatory authorities
- You may be able to take civil enforcement action
- Know your rights and responsibilities before engaging in a direct action campaign

# 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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