



Have Your Say: Martins Creek Quarry Project

Paterson

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About EDO NSW

- Community legal centre specialising in public interest environmental law
- Independent from Government
- Services extend to all of NSW – Offices in Sydney & Lismore
 - Legal Advice and Casework
 - Policy & Law Reform
 - Community Legal Education and Outreach
 - Indigenous, Scientific and International programs
- Australian Network of EDOs

Free initial legal advice, website, fact sheets and updates

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

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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](#)

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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 over \$2 are tax deductible
- Forms here today
- You can also donate online
 - <http://www.givenow.com.au/edonsw>

Workshop overview

- Commenting on environmental decisions
- Martins Creek Quarry: Tips on engaging effectively
- Legal options



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.

COMMENTING ON ENVIRONMENTAL DECISIONS

E D O

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

- Shape environmental laws
- Shape plans and policies
- **Respond to specific applications**
- **Monitor and enforce environmental regulation**

Common methods of having your say

- Writing submissions
- Appearing before a meeting, panel or inquiry hearing
- Attending workshops and information sessions



Image: City of Calgary

Public participation requirements

- Can be mandatory. e.g. – the requirements for designated development applications

Environmental Planning and Assessment Act 1979 No 203

Current version for 30 September 2015 to date (accessed 23 October 2015 at 09:48)

[Part 4](#) > [Division 2](#) > [Section 79](#)

<< page >>

79 Public participation—designated development

(1) Public exhibition and notification

As soon as practicable after a development application is made for consent to carry out designated development, the consent authority must:

- place the application and any accompanying information on public exhibition for a period of not less than 30 days (the *submission period*) commencing on the day after which notice of the application is first published as referred to in paragraph (d), and

- Can be discretionary - e.g. – the requirements for making SEPPs

Environmental Planning and Assessment Act 1979 No 203

Current version for 3 January 2014 to date (accessed 29 January 2014 at 13:51)

[Part 3](#) > [Division 2](#) > [Section 38](#)

<< page :

38 Consultation requirements

Before recommending the making of an environmental planning instrument by the Governor, the Minister is to take such steps, if any, as the Minister considers appropriate or necessary:

- to publicise an explanation of the intended effect of the proposed instrument, and
- to seek and consider submissions from the public on the matter.

Advantages of public participation

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

Barriers to public participation

- Finding out about opportunities to comment
- Finding the time to engage
- Having relevant understanding of the issues or processes involved

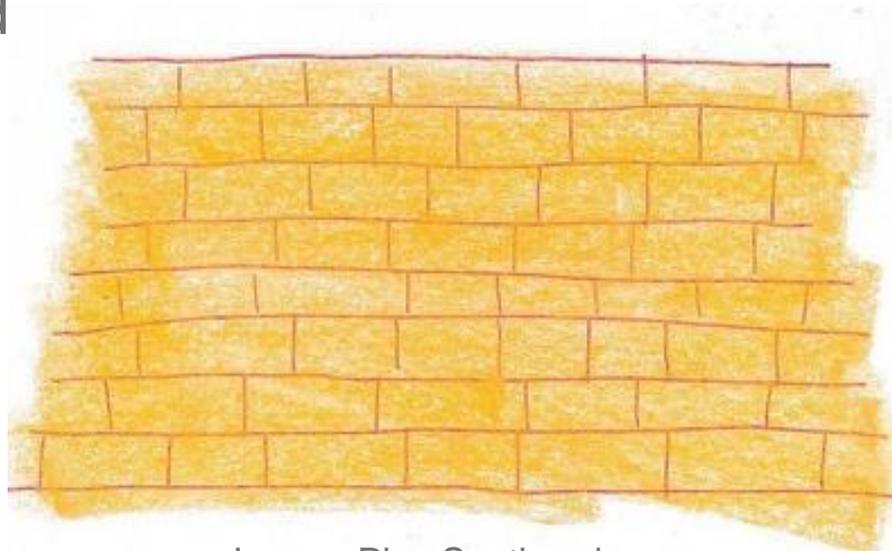


Image: Play Southend

MARTINS CREEK QUARRY PROJECT: TIPS ON ENGAGING EFFECTIVELY

EDDO

What is proposed?

- Extracting up to 1.5 million tonnes of hard rock material p/a
- Clearing about 36ha of vegetation
- Increasing hours of operation
- Consolidating existing operations and approvals
- Rehabilitating the site

Who is the decision-maker?

- NSW Department of Planning and Environment assesses the application
- NSW Planning Minister's delegate determines the application
 - Under 25 submissions – Senior Planning Department staff
 - Over 25 submissions – Planning Assessment Commission (PAC)

What has the process been for the current DA?

- Developer submitted request for Environmental Assessment Requirements submitted to Planning Department in 2014
- Department issued Environmental Assessment Requirements November 2014 following correspondence with local council and community groups
- Department issued Revised Environmental Assessment Requirements May 2015 following correspondence from Office of Environment and Heritage

What documents am I commenting on in my submission?

- Everything that makes up the DA – (SSD 14_6612)
 - Environmental Impact Statement and all annexures
 - Any Species Impact Statement
 - Any additional plans
- Download them from the NSW Planning and Environment Major Projects website when they become available so you have a copy.

How long will I have to make my submission?

- Because it is SSD, the EIS needs to go on public exhibition for at least 30 days
- Don't have to wait until EIS is released – you can start preparing your submission now

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



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:

- extracts more than 500,000 tonnes of extractive materials per year, or
- extracts from a total resource (the subject of the development application) of more than 5 million tonnes, or
- extracts from an environmentally sensitive area of State significance.

(2) Subclause (1) (c) does not apply to extraction:

- by a public authority in maintenance dredging of a tidal waterway, or
- in maintenance dredging of oyster lease areas, or adjacent areas, in Wallis Lake.

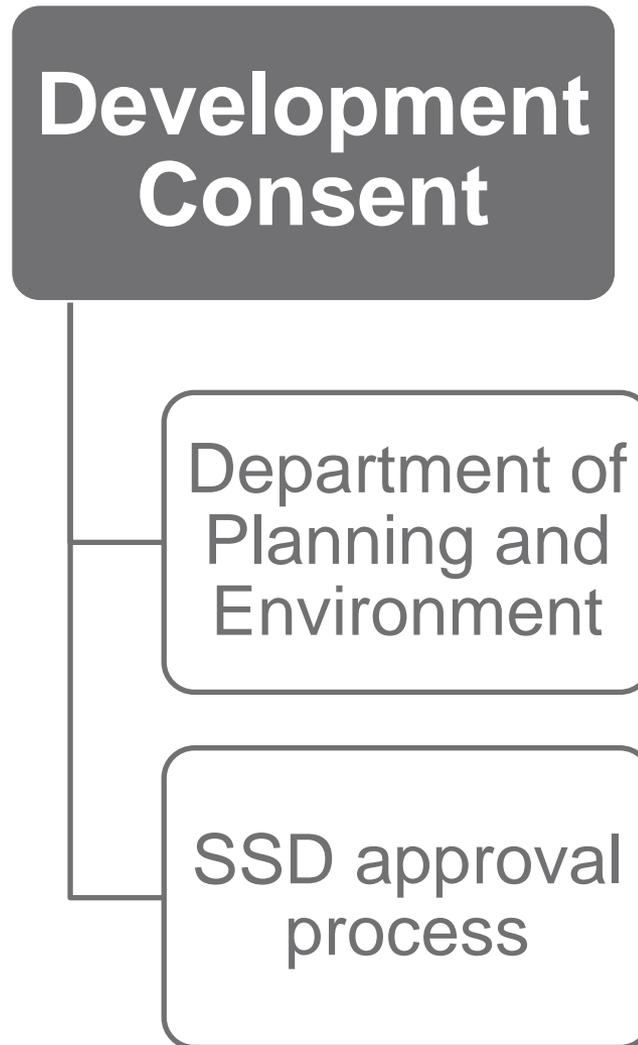
(3) Development for the purpose of extractive industry related works (including processing plants, water management systems, or facilities for storage, loading or transporting any construction material or waste material) that:

- is ancillary to or an extension of another State significant development project, or
- 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 EARs)

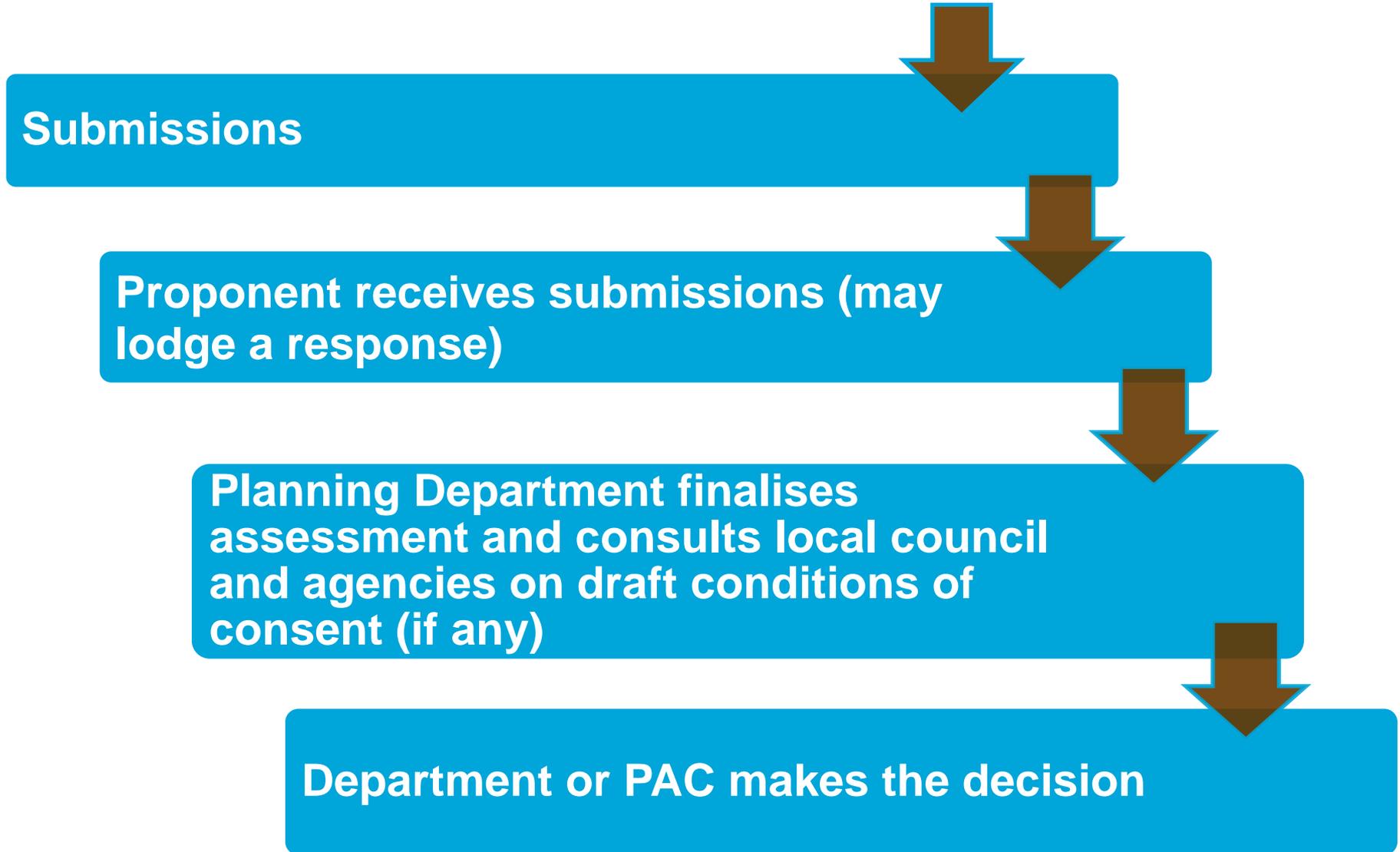
Proponent consults with local council,
government agencies and the
community in preparing an EIS

Proponent lodges the Application and
EIS

Department exhibits the Application
and EIS for minimum of 30 days


YOU ARE HERE

Process for granting development consent – SSD cont.



Information about the project

[Skip to content](#)



Planning & Environment

Major Project Assessments

[Home](#) > [Development Assessments](#) > [Major Project Assessments](#) > [Search](#)

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)

Martins Creek Quarry Project

SEARs Issued

The proposal involves the extraction of 1.5 million tonnes of material per annum, comprising of andesite hard rock, expansion into new extraction areas and the consolidation of existing operations and approvals.

Attachments & Resources

- Request for DGRS (4)
- Secretary's Requirements (4)

Key dates and other information

Job Status	SEARs Issued
Assessment Type	SSD
Project Type	Mining, Petroleum & Extraction > Extractive Industries
Application Number	SSD 14_6612
DGRS Issued:	11/11/2014

Prepare DGRs

DGRs Issued

Exhibition

Preparing Response to Submissions

Environmental Assessment Requirements (EARs)

- Traffic and transport
 - Accurate predictions of road traffic
 - Detailed assessment of potential impacts on capacity, condition, safety and efficiency of roads
- Blasting and vibration
 - Proposed hours and frequency
 - Likely impacts
- Air quality
 - Construction and operational impacts PM2.5 & PM10
 - Dust generation
 - Mitigation measures

Environmental Assessment Requirements (EARs)

- Noise
 - Construction, operational and off-site noise impacts
 - Mitigation measures
 - Monitoring measures
- Water
 - Impacts on quality of regional water supplies
 - Affected licensed water users
 - Water discharge quantities and quality
 - Water monitoring program

Environmental Assessment Requirements (EARs)

- Land
 - Impact on soils
 - Impact on landforms
- Biodiversity
 - Likely impacts and offsets strategy
- Heritage
 - Aboriginal and historic heritage impacts

Environmental Assessment Requirements (EARs)

- Visual
- GHG
- Hazards
- Social and economic
- Rehabilitation

Specific EARs required by OEH

- Biodiversity
 - *Framework for Biodiversity Assessment*
- Aboriginal cultural heritage
 - *Guide to investigating and reporting on ACH*
 - Where heritage ID'd – consult with people who have cultural association with the land
 - Impacts to be assessed and documented
- Historic heritage
 - State and local heritage
 - Mitigation and management
 - Heritage consultant
 - Archaeological assessment if necessary

Specific EARs required by OEH

- Water and soils
 - Mapping
 - Background conditions
 - Water quality
 - Hydrology
- Flooding and coastal erosion
 - Mapping
 - flood assessment
 - Flood behaviour modeling

How do I go about preparing a 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

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

Information from Government

- Government and Council websites
- Informal requests - Freedom of Information Officer
- Formal requests (fee)
 - Freedom of Information laws (Federal level)
 - GIPA laws (State/local level)
- Assistance
 - Information and Privacy Commission

Information from Parliament

- Hansard
 - A record of what is said in Parliament – intended effect of the law you're referring to
- 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



Legal resources and research

- Legislation and regulations
 - Vast amount of environmental law in NSW and Federally
 - There can be more than one law applying to a situation
 - All Federal and State legislation and regulation is online
- Case Law
 - Finding a case with similar facts to your own situation can help in understanding how the law is applied
 - Search for key words or cases by name
- Legal research
 - Legal Information Access Centre
 - Assistance with legal research

Evidence gathering

- It's important to be able to support your claims with evidence
 - photographs and videos
 - collecting physical evidence such as noise and dust monitoring
 - logbooks – truck movements
 - collecting documentation relevant to the issue
 - Legal research
 - **Previous assessments for developments on or near the site**



Image: Michael L. Baird

How do I set out my 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
- Give recommendations – tell the decision-maker what you want them to do

How do I set out my submission?

- Personalise the submission – it's OK to a sign pro forma submission, but ensure you personalise it a bit
- Talk about how the proposal will affect
 - you
 - your family
 - the environment
 - the local economy
 - existing industry

A note on 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

Give the decision-maker an alternative

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

Engage the reader

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

Back up your argument

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

What does the decision-maker need to consider?

- The application itself
 - EIS – does it cover what the EARs say it needs to?
 - Any SIS
- SEPPs, LEPs and DCPs applying to the land
- Environmental, social and economic impacts
- Suitability of the site for the development
- Submissions made during submission period
- The public interest
 - Includes ecologically sustainable development

Are there existing documents that might help me with my submission?

- Previous reports on the area – community studies, surveys, ecological reports, heritage information (AHIMS), etc.
- Existing development consent and conditions
- Discuss any additional issues identify yourself

What happens after I have made my submission?

- Department of Planning and Environment provides proponent with submission or summary of submissions
- Department MAY require applicant to respond to submissions
- Department assesses application
- Department MAY prepare an assessment report (likely if it's going to PAC)
- Final determination will be made by Department (under 25 subs) or PAC (over 25 subs)

What happens after I have made my submission?

- Sometimes PAC holds a public meeting or public hearing into an application
- Community members and groups can register to speak
- If a PAC **hearing** is held, merit appeal rights are extinguished

Appearing before a meeting, panel or inquiry hearing

- Keep in mind the terms of reference
- 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 neatly and be on time



Image: SIAcademy

Concurrence from other agencies

- Before the application can be approved, concurrence may be required from:
 - Office of Environment and Heritage
 - Potential to affect threatened species, populations or ecological communities
 - Potential to impact Aboriginal heritage
 - EPA
 - Pollution licence/licence variation
- Consider contacting these agencies to voice your concerns

Other approvals required

- Additional permits and approvals may also be required:
 - Department of Primary Industries – Water
 - Water use approval
- Consider contacting these agencies to voice your concerns

LEGAL OPTIONS

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Can the decision be challenged in Court?

- Act quickly & seek legal advice
- Merit Appeal – within 28 days of decision
- Judicial review – within 3 months of decision
- Civil enforcement – if there is non-compliance



Merit appeal – Warkworth coal mine expansion



Image: Warkworth coal mine – John Krey



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
 - 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 navigation menu includes: About Us, Planning your Region, Planning your Local Area, Delivering Homes, Building in NSW, Development Proposals, and Policy and Legislation. The current page is 'Compliance' under 'Development Proposals'. The left sidebar lists various services like 'Development Assessment Systems', 'Performance Monitoring', and 'Compliance'. The main content area is titled 'Compliance' and includes sections for 'Our role', 'Our role' (repeated), and 'Role of proponents'. A photograph of a person in a field with a wind turbine in the background is also visible.

NSW Planning & Environment

Home > Development Proposals > Compliance

Compliance

- ▶ Our role
- ▶ Role of proponents
- ▶ Compliance policy and guidelines
- ▶ Compliance activity reports
- ▶ Compliance Audits
- ▶ Rawang International Health Precinct, La Vie Developments Pty Ltd

Our role

The Department of Planning & Environment has an important role in monitoring and enforcing compliance with the Minister's approvals.

To assist in its compliance functions, the department has specialist compliance teams based in its:

- ▶ Sydney head office, and
- ▶ Singleton office (for coal mining in the Upper Hunter)

Additionally, the department's alpine resorts team at Jindabyne also carries out compliance functions.

The department's compliance teams conduct inspections and audits of approved projects, respond to reports and complaints received from other State agencies, local councils and members of the public, investigate potential breaches and carry out enforcement action where breaches are confirmed. Enforcement action may range from negotiated outcomes, warning letters, penalty notices and in the most significant cases, criminal prosecutions.

The department's compliance teams also:

- ▶ 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.

Role of proponents

Proponents and other persons working on projects approved by the Minister for Planning have a legal obligation to ensure their projects are carried out in strict compliance with the Minister's conditions of approval. Proponents need to monitor the environmental performance of their projects to ensure compliance is maintained. In many cases, conditions of approval require proponents to report on their level of compliance and in significant projects such as mines, major infrastructure projects and major industries, to commission independent environmental experts to audit their performance and report back to the department.

Civil enforcement: Maules Creek coal mine



Image: Phillip Spark

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 eBulletin
- 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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