



How to Have Your Say on the Draft North Coast Regional Plan and How to Enforce Environmental Laws

Valla Beach
7 May 2016

Emily Ryan – Outreach Director
Sarah Roebuck – Solicitor



About EDO NSW

- Not-for-profit, non-government community legal centre specialising in public interest environmental law
- Services extend to all of NSW – Offices in Sydney & Lismore
 - Legal Advice and Casework
 - Policy & Law Reform
 - Community Legal Education and Outreach
 - Aboriginal, Scientific and International programs
- EDOs of Australia

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



An independent community legal centre specialising in public interest
environmental law



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 over \$2 are tax deductible
- Forms here today
- You can also donate online
 - www.edonsw.org.au/donate

Workshop overview

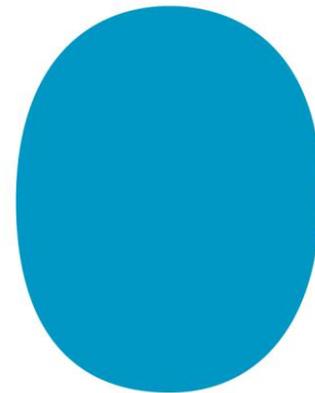
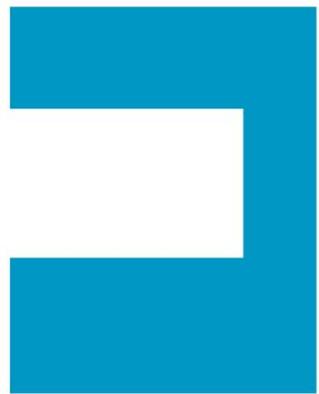
- Draft North Coast Regional Plan
- Enforcing Environmental Laws



Information, not advice

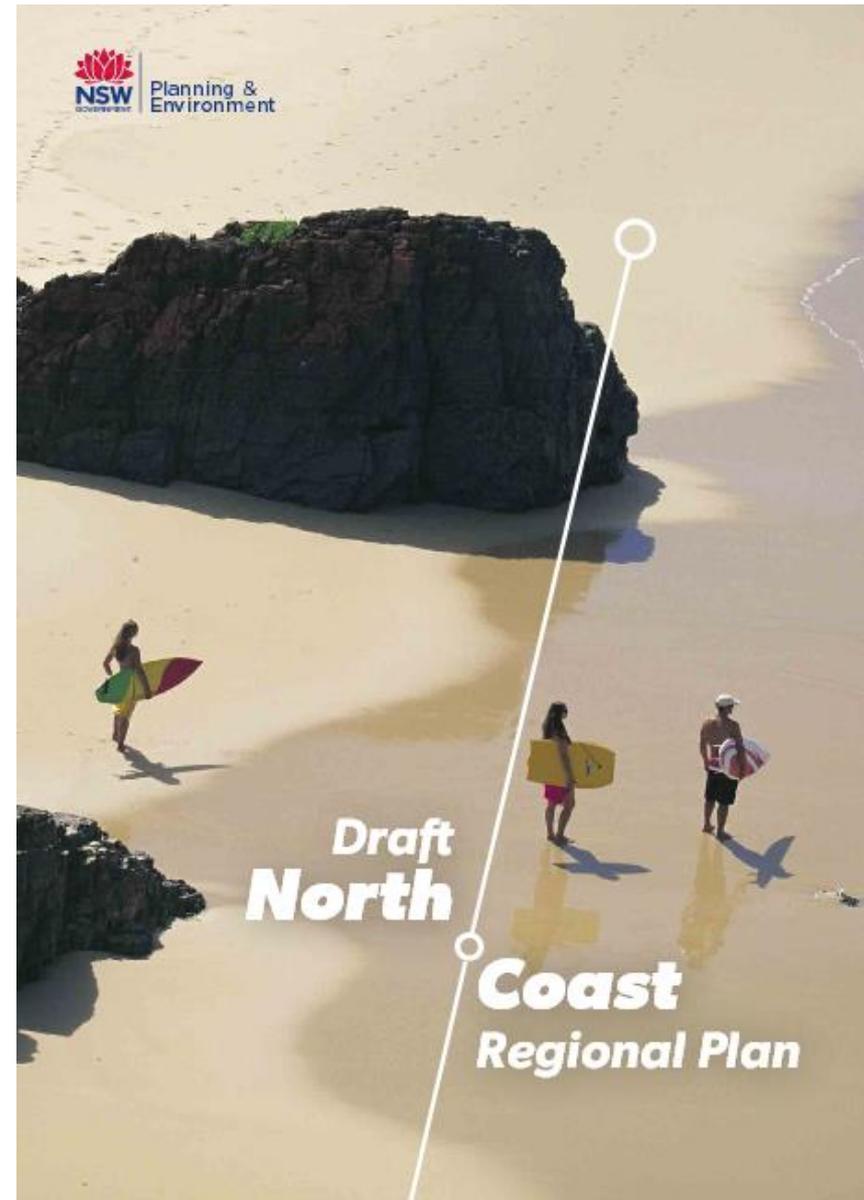
- The information contained in this workshop is a guide only and is no substitute for legal advice relating to your particular issue.
- If you need legal advice about your particular issue, please call our Environmental Law Line.

DRAFT NORTH COAST REGIONAL PLAN



What is the draft Plan?

- The NSW Government's proposed blueprint for the next 20 years for both the Mid North Coast and the Far North Coast.
- Discusses resource extraction and mining, Aboriginal culture and heritage, housing, transport and other infrastructure, native vegetation, farmland, and the management of land use conflicts.



Goal 1: A natural environment, and Aboriginal and historic heritage that is protected, and landscapes that are productive

- Direction 1.1 Protect the environment, and Aboriginal and historic heritage
 - Action 1.1.1 Identify and manage areas of high environmental value
 - Action 1.1.2 Identify and map areas of potential high environmental value and Aboriginal and historic heritage in proposed urban and employment land
 - Action 1.1.3 Review and update planning controls and heritage studies to protect Aboriginal and historic heritage assets

Goal 1: A natural environment, and Aboriginal and historic heritage that is protected, and landscapes that are productive

- Direction 1.2 Protect and enhance productive farmland
 - Action 1.2.1 Investigate complementary activities in rural zones
 - Action 1.2.2 Increase the region's biosecurity through the use of buffers and land use conflict risk assessment
 - Action 1.2.3 Review the Northern Rivers and Mid North Coast farmland mapping projects
 - Action 1.2.4 Adopt State and regionally significant farmland interim variation criteria

Goal 1: A natural environment, and Aboriginal and historic heritage that is protected, and landscapes that are productive

- Direction 1.3 Safeguard aquatic habitats and water catchments
 - Action 1.3.1 Protect marine environments, water catchment areas and groundwater sources
 - Action 1.3.2 Finalise water sharing plans for rivers and groundwater systems on the North Coast
 - Action 1.3.3 Investigate opportunities to integrate the marine estate and adjacent coastal land uses

Goal 1: A natural environment, and Aboriginal and historic heritage that is protected, and landscapes that are productive

- Direction 1.4 Adapt for natural hazards and climate change
 - Action 1.4.1 Build on regional understanding of projected climate impacts and implement opportunities to respond



Goal 1: A natural environment, and Aboriginal and historic heritage that is protected, and landscapes that are productive

- Direction 1.5 Deliver economic growth through sustainable use of, and access to, mineral and energy resources
 - Action 1.5.1 Facilitate investment in the resources and energy sector



Goal 2: Focus growth opportunities to create a great place to live and work

- Direction 2.1 Grow the North Coast's regional cities as a focus for economic activity and population growth
 - Action 2.1.1 Establish governance arrangements for the delivery of investment and infrastructure in the regional cities
 - Action 2.1.2 Prepare a Regional Cities Action Plan



City Centres - These are core civic, employment and service hubs. They offer greater housing choice close to services. Other growth precincts have developed in locations that are accessible to or near city centres to benefit from the activities and networks they offer.



Urban Release Areas - These will support the growing population, and will in turn drive demand for the services offered in growth precincts, as well as housing some of the working population.



Employment Lands - These will support employment capacity and a growing economy by encouraging the establishment of new industries and expansion of existing operations.



Education Precincts - These will accommodate the growing demand for tertiary education on the North Coast and build on existing strong links with industry sectors to provide a skilled workforce and student housing options.



Health Services Precincts - These will underpin the strength of the health sector by addressing increasing pressure from population growth and ensuring the wellbeing of North Coast residents.



Airport Precincts - These tourism and business gateways to all growth precincts and the wider subregions will improve access to and from the North Coast.

Goal 2: Focus growth opportunities to create a great place to live and work

- Direction 2.2 Align cross-border planning with South East Queensland
 - Action 2.2.1 Collaborate with relevant authorities to understand the implications of growth in South East Queensland on the Far North Coast

Goal 2: Focus growth opportunities to create a great place to live and work

- Direction 2.3 Focus growth to the least sensitive and constrained areas to protect natural assets
 - Action 2.3.1 Focus future growth into the mapped urban growth areas
 - Action 2.3.2 Identify residential, commercial and industrial uses in urban growth areas by developing local growth management strategies
 - Action 2.3.3 Minimise the impact of rural residential development

Goal 2: Focus growth opportunities to create a great place to live and work

- Direction 2.4 Provide great places to live through good design
 - Action 2.4.1 Support council-led precinct planning
 - Action 2.4.2 Encourage healthy living by increasing options for public transport, walking and cycling
 - Action 2.4.3 Review the North Coast Urban Design Guidelines

Goal 3: Housing choice, with homes that meet the needs of changing communities

- Direction 3.1 Provide sufficient housing supply to meet the demands of the North Coast
 - Action 3.1.1 Review land supply to identify proposed urban land for extra dwellings
 - Action 3.1.2 Accelerate the supply of proposed urban land to meet demand in high growth areas
 - Action 3.1.3 Monitor land and housing supply through the North Coast *Housing and Land Monitors*

Goal 3: Housing choice, with homes that meet the needs of changing communities

- Direction 3.2 Deliver housing choice to suit changing needs
 - Action 3.2.1 Investigate the policies, plans and investments that would support greater housing diversity
 - Action 3.2.2 Work with LALCs to conduct a strategic assessment of their landholdings to identify priority sites for further investigation of their economic opportunities
- Direction 3.3 Deliver more opportunities for affordable housing
 - Action 3.3.1 Facilitate the supply of more affordable housing

Goal 4: A prosperous economy with services and infrastructure

- Direction 4.1 Expand the tourism sector on the North Coast
 - Action 4.1.1 Facilitate the nature-based, events and cultural tourism sectors on the North Coast



Goal 4: A prosperous economy with services and infrastructure

- Direction 4.2 Develop health services and precincts
 - Action 4.2.1 Support health services precincts by attracting complementary uses in these precincts
- Direction 4.3 Enhance education precincts
 - Action 4.3.1 Facilitate planning for additional primary and secondary school places to meet the region's growing needs
 - Action 4.3.2 Work with education providers and councils to create education precincts that support campuses

Goal 4: A prosperous economy with services and infrastructure

- Direction 4.4 Provide well-located and serviced supplies of employment land to expand industry investment opportunities
 - Action 4.4.1 Provide an adequate supply of employment land aligned with demand
 - Action 4.4.2 Encourage well-located employment land with suitable buffers to minimise land use conflicts

Goal 4: A prosperous economy with services and infrastructure

- Direction 4.5 Grow the region's commercial and business centres



Image: Tim Keegan

Goal 5: Improved transport connectivity and freight networks

- Direction 5.1 Strengthen the Pacific Highway's function as a key road corridor of State and national significance
 - Activity 5.1.1 Protect the travel time and safety improvements from the upgrade program
 - Action 5.1.2 Designate highway service centres along the Pacific Highway
 - Action 5.1.3 Identify freight transport facilities along the Pacific Highway

Goal 5: Improved transport connectivity and freight networks

- Direction 5.2 Expand the region's aviation services
 - Action 5.2.1 Develop aviation precincts with compatible and complementary uses
- Direction 5.3 Enhance the connectivity of the region's road and rail freight and transport services
 - Action 5.3.1 Identify connectivity improvements for key State roads on the North Coast
 - Action 5.3.2 Provide improved transport services between larger settlements and regional communities
 - Action 5.3.3 Identify and protect future rail corridors on the North Coast

What does this all mean?

- It's not clear exactly how the proposals in the draft Plan will be implemented if the final Plan is made, but there are some indications:
 - Section 117 directions for Councils to do certain things
 - Land use zoning (LEPs)
 - Review of existing policies and provisions
 - Development controls
 - Government and councils working together

Where does it fit in the legal framework?

- Laws

- Regulations

- Policies



Here

How will it be implemented?

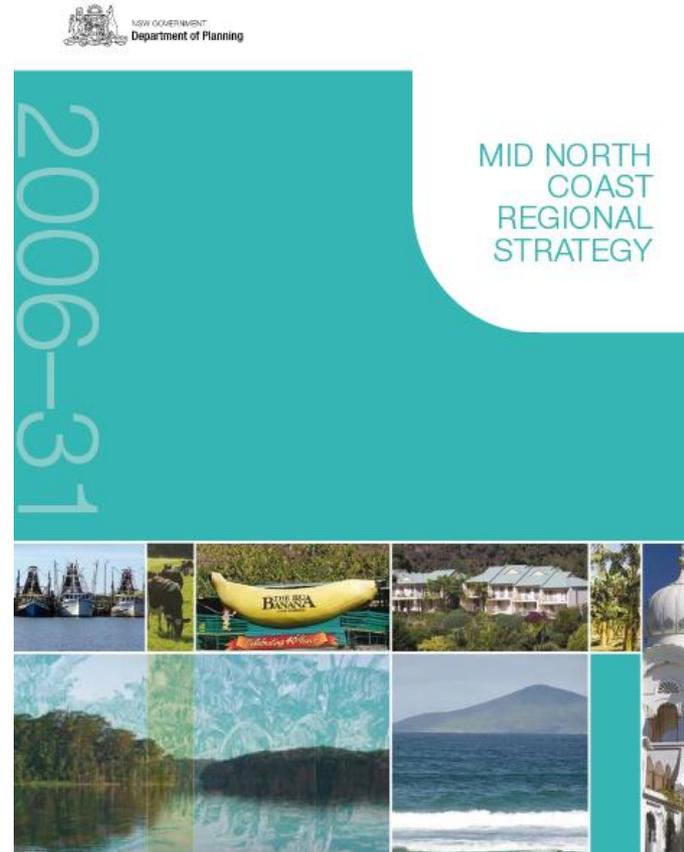
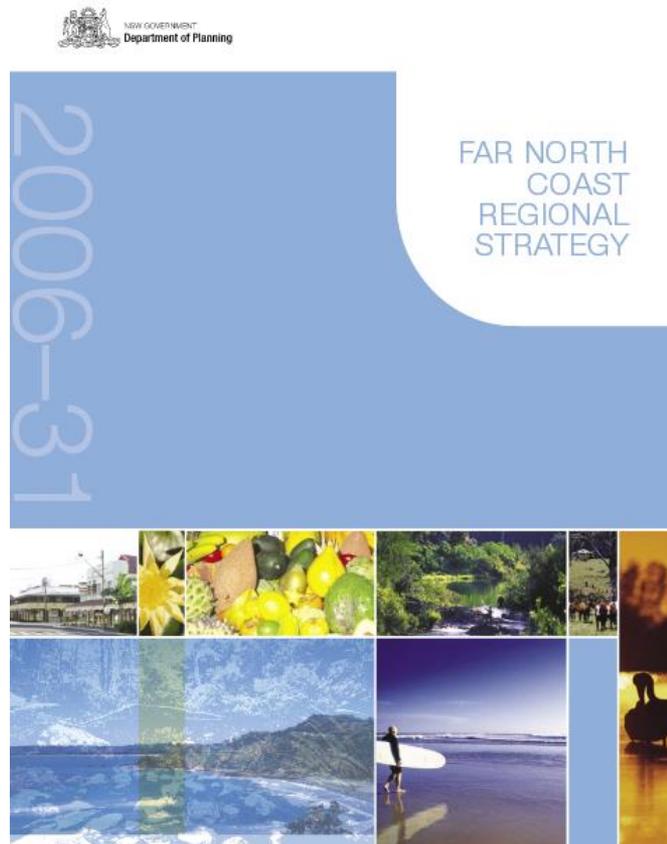
- Local planning directions (s 117 *Local Government Act*)
 - Implement objectives and actions in council planning strategies and local environmental plans
- Whole-of-government policy alignment
- Regional collaboration across government, business, key stakeholders and the wider community for specific projects and processes

How will it be implemented?

- A Coordination and Monitoring Committee will be established to see the implementation of the final Plan:
 - Department of Planning and Environment – Chair
 - Regional Organisations of Councils x 2
 - Office of Environment and Heritage
 - Department of Premier and Cabinet
 - Department of Industry
 - Transport for NSW

What will the plan replace?

- Far North Coast and Mid North Coast Regional Strategies 2006-31 which were released in 2008



How can I have my say about the draft Plan?

- Written submissions are invited until Thursday 2 June 2016
 - 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?

- Written submissions are invited until Thursday 2 June 2016
 - Personalise the submission – it's OK to a sign pro forma submission, but ensure you personalise it a bit
 - Talk about how the Plan 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

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 strategies and plans (including the ones that are going to be replaced by this one)
- Existing development consent and conditions
- Discuss any additional issues identify yourself

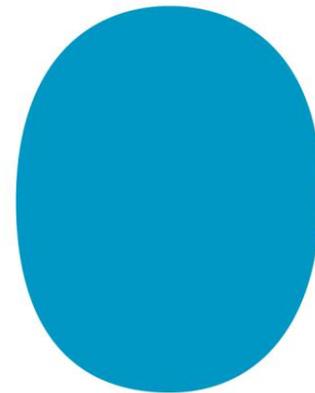
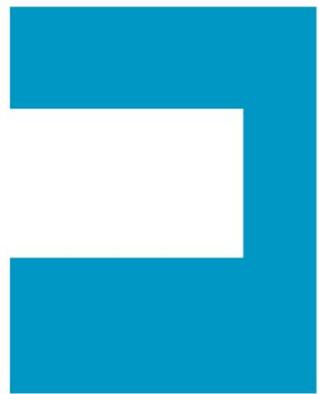
Appearing before a meeting, panel or inquiry hearing

- 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



Image: SIAcademy

MONITORING AND ENFORCING ENVIRONMENTAL LAWS



Key Questions

1. What has been approved?
2. Can the approval be challenged in court?
3. Who gives the approval & who enforces the laws?
4. What are the limits of approval?
5. What information can I access?
6. How can the responsible authority enforce the law?
7. 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. 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



2. Can the decision be challenged in Court? Merit appeal – Warkworth coal mine expansion



Image: Warkworth coal mine – John Krey



2. Can the decision be challenged in Court? Merit appeal – Gerroa Sand Mine



2. Can the decision be challenged in Court? Judicial Review – The Gloucester Gas Project



Image: Kate Ausburn

3. Who gives the approval & who enforces the laws?

- Development consent
 - Granted by NSW Minister for Planning or PAC or local council
 - Enforced by NSW Department of Planning and Environment or local council
- 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

4. 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



4. 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

4. 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

5. What information can I access?

- Information from Government/council
 - Government/council websites
 - Development consent and conditions
 - Pollution licence
 - 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/>

5. 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

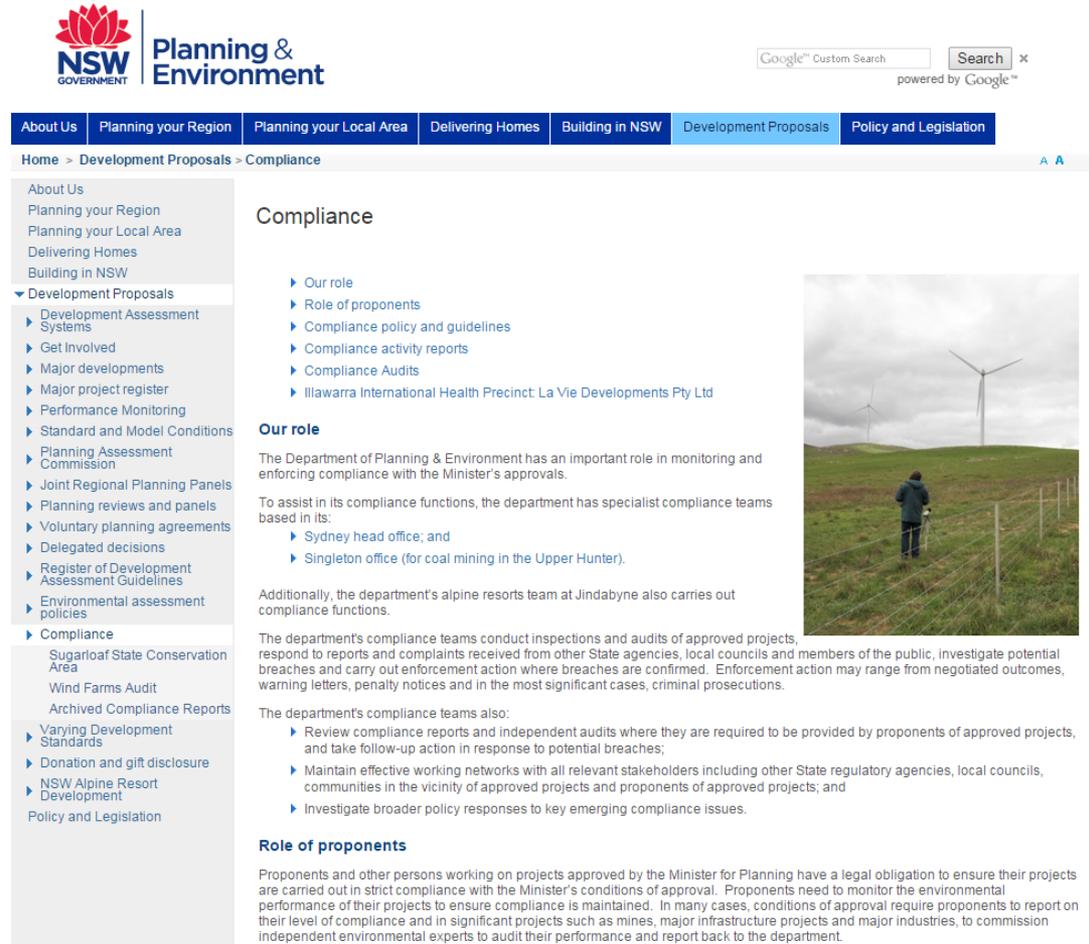


6. How can the responsible authority enforce the law?

- 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.

6. How can the responsible authority enforce the law? 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 header includes the NSW Government logo and the department name. A navigation menu at the top lists various services, with 'Development Proposals' and 'Compliance' highlighted. The main content area is titled 'Compliance' and contains several sections: 'Our role', 'Our role' (repeated), 'Role of proponents', and 'Role of proponents' (repeated). Each section contains a list of bullet points detailing the department's functions and responsibilities. A photograph of a person standing in a field with wind turbines in the background is also visible.

NSW GOVERNMENT | **Planning & Environment**

Google™ Custom Search Search x
powered by Google™

About Us | **Planning your Region** | **Planning your Local Area** | **Delivering Homes** | **Building in NSW** | **Development Proposals** | **Policy and Legislation**

Home > Development Proposals > Compliance

Compliance

- ▶ Our role
- ▶ Role of proponents
- ▶ Compliance policy and guidelines
- ▶ Compliance activity reports
- ▶ Compliance Audits
- ▶ Illawarra 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.



6. 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

6. 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



6. 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



6. 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



6. 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



6. How can the responsible authority enforce the law?

- Who to contact
 - Breaches of development consent and conditions
 - Department of Planning and Environment or local council
 - Breaches of mining and CSG titles
 - Division of Resources and Energy
 - Pollution
 - EPA or local council

6. How can the responsible authority enforce the law?

- Who to contact
 - Breaches of water access licence
 - Office of Water
 - Destruction of Aboriginal heritage or breach of AHIP
 - Office of Environment and Heritage (Hunter Central Coast Region)
- 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

7. 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



7. 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

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

Civil enforcement: Maules Creek coal mine



Image: Phillip Spark

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

- Civil enforcement: Georges River pollution



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



Free initial legal advice, website, fact sheets and updates

- Free Environmental Law Line Monday-Friday
— 1800 626 239
- Fact sheets and other resources
<http://www.edonsw.org.au>
- 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; and
 - Provide community legal education.
- Donations are tax deductible
- www.edonsw.org.au/donate