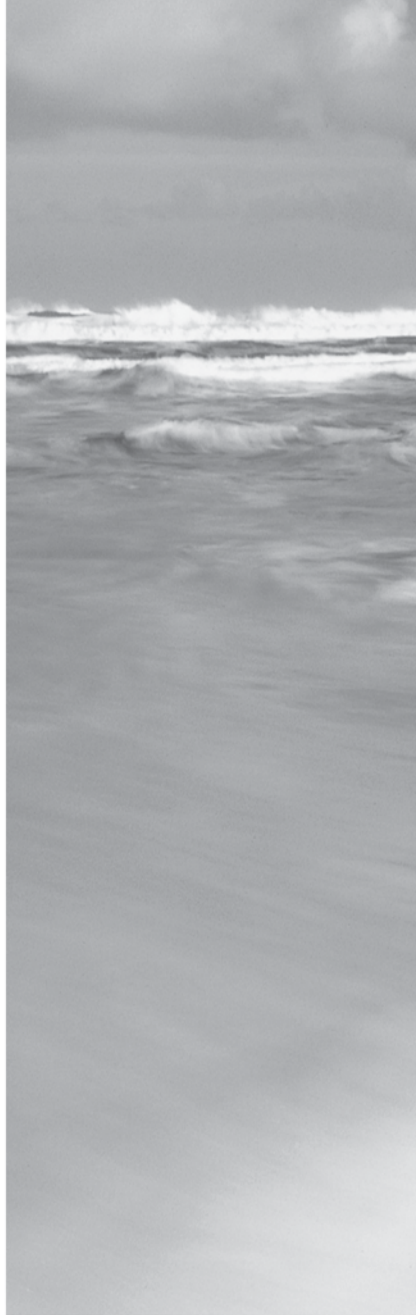




# CARING FOR THE COAST

A GUIDE TO ENVIRONMENTAL LAW  
FOR COASTAL COMMUNITIES IN NSW



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Rosemary Bullmore has prepared and edited this guide with the assistance of EDO staff members and volunteers. Rosemary is an admitted Solicitor to the Supreme Court of NSW.

The EDO is a non-profit community legal centre specialising in public interest environmental law. The EDO provides legal advice and representation, engages in policy and law reform, delivers community programs such as community legal education, and provides technical and scientific advice in public interest environmental matters. For more information about the EDO, please visit: [www.edo.org.au/edonsw](http://www.edo.org.au/edonsw)

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## Disclaimer

This publication is intended to provide general information about legal rights and obligations. While all care has been taken in the preparation of this guide, it is not a substitute for legal advice in individual cases.

## Currency

The information contained in this guide is current as at October 2010.

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This book has been printed on 100% recycled paper.



CARING  
FOR  
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# INTRODUCTION

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The purpose of this booklet is to help you understand your legal rights and obligations as a member of a coastal community and assist you in being an informed and active participant in planning and environmental decisions.

Every effort has been made to provide information that is accurate in a straightforward way. Sometimes the law can be complex and two different laws may conflict with one another so that it is unclear what the law actually says and which law prevails. If you think that two laws require different things from you, you should speak to a lawyer at the EDO.

For more information about the topics covered in this booklet, see the EDO *Environmental Law Fact Sheets*, available online at [www.edo.org.au/edonsw](http://www.edo.org.au/edonsw).

For free legal advice on environmental law matters, contact the EDO *Environmental Law Advice Line*.

Sydney Office: 02 9262 6989 or 1800 626 239 (free call) between 2.30pm and 5.30pm Monday to Thursday.

Northern Rivers Office: 1300 369 791 between 9.00am and 5.30pm Monday to Thursday.

## *Responding to Breaches of Environmental Law*

If you are concerned about a breach of environmental law, you can report the breach to the appropriate authority, such as your local council or the Department of Environment, Climate Change and Water. Read *Part 3* of this guide to identify the appropriate authority. For contact details of relevant authorities, see *Useful contacts* at the end of this booklet.

The EDO website contains a 'compliance portal' to assist you in detecting breaches of the law. The portal contains links to public registers where you can access licences and approvals as well as the conditions attached to them. For more information contact the EDO or go to: [www.edo.org.au/edonsw/compliance](http://www.edo.org.au/edonsw/compliance).

If there has been a breach of the law the relevant authority may choose to take enforcement action. If the relevant authority does not take enforcement action you may be able to go to court to obtain a court order to remedy or restrain a breach of the law.

## **What is a coastal area?**

This booklet deals with coastal areas. A coastal area is land next to the sea and the region adjoining it. There is no specific definition of a coastal area and each community will be different. However, in planning law the area adjoining the sea is called the coastal zone.

## What is the coastal zone?

The NSW coastal zone is defined in the *Coastal Protection Act 1979* and generally includes land:<sup>1</sup>

- One kilometre inland from the coast;
- One kilometre land ward around any bay, estuary, coastal lake or lagoon; and
- One kilometre inland from either bank of a coastal river.

The coastal zone also includes coastal waters which generally extend up to three nautical miles from the NSW coastline.<sup>2</sup>

The precise boundaries of the coastal zone are shown on a series of maps. The coastal zone maps can be viewed at your local council chambers or at the Department of Planning's head and regional offices. Maps of the metropolitan region between Newcastle City Council and Shellharbour Council (including Sydney) are available on the Department of Planning's website.<sup>3</sup>

## What does it mean if my land is within the coastal zone?

If land is within the coastal zone then additional laws will apply to the land, including:

- The *Coastal Protection Act 1979* (NSW);
- *NSW Coastal Policy 1997*; and
- *State Environmental Planning Policy 71 – Coastal Protection*.

Please see Chapter 2 for more information on how these laws and policies are applied in the coastal zone.

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<sup>1</sup> *Coastal Protection Act 1979*, (NSW) s. 4A(1).

<sup>2</sup> *Coastal Protection Act 1979*, (NSW) s. 4B.

<sup>3</sup> The coastal zone maps for the greater metropolitan region are available here: [www.planning.nsw.gov.au/PlansforAction/Coastalprotection/Metropolitanregioncoastalzonemaps/tabid/178/Default.aspx](http://www.planning.nsw.gov.au/PlansforAction/Coastalprotection/Metropolitanregioncoastalzonemaps/tabid/178/Default.aspx)



# PART ONE: *Planning and the Coast*

There are immense pressures on coastal communities from population growth, tourism and climate change impacts. Coastal communities are faced with the challenge of managing these pressures and balancing them with the environmental needs of coastal ecosystems. Planning law plays a key role in addressing these unique challenges. The information in this Part is designed to help you make informed choices about development in your coastal community.

# Chapter 1:

## Planning law and the environment

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Planning law regulates how coastal communities are developed and organised by specifying what can be built and where. Planning law also sets out the environmental assessment requirements for developments in coastal areas. The responsibility for coastal protection is generally split between State and local governments.<sup>4</sup> The Minister for Planning has a general responsibility for coastal areas and often plays a role in approving or refusing development applications.<sup>5</sup> Local governments are responsible for zoning coastal areas and are responsible for making decisions about developments that are not determined by the State Government. By being well informed and becoming actively involved in planning decisions, the community can participate in the protection of the coast.

### 1.1 The basics of planning law

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Planning law primarily operates at both the State and local government level.<sup>6</sup> The main Act that regulates planning is the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act).<sup>7</sup> This Act is supported by the *Environmental Planning and Assessment Regulation 2000* (NSW) (EP&A Regulation). The EP&A Act sets out the process for making key land use planning documents called Environmental Planning Instruments. Environmental Planning Instruments are legally binding documents and include Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPPs). These set out what sort of development can go where. There are also a wide range of non-binding policies and strategies that guide planning decisions. These include Regional Strategies and Development Control Plans.

The EP&A Act also regulates how developments are assessed and approved or refused. The assessment procedure is different depending on whether the development is being approved by the local council or the Minister for Planning.

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<sup>4</sup> The Federal government also has responsibility for some aspects of the coastal environment, for example, Ramsar wetlands, World Heritage Areas, Federally listed threatened species, Commonwealth marine areas, the marine environment and migratory species. See *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 12, 15B, 16, 18, 20, 21, 23, 24B.

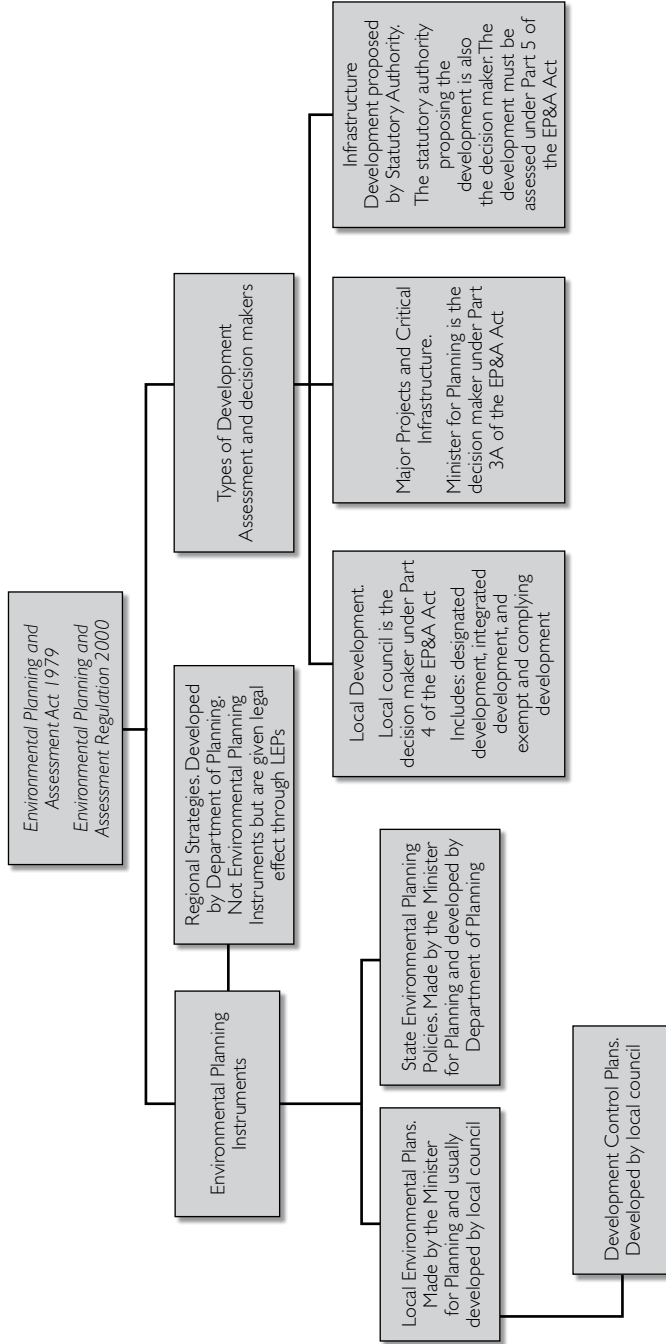
<sup>5</sup> *Coastal Protection Act 1979* (NSW) s. 38, *State Environmental Planning Policy (Major Development) 2005*, cl. 13C and Schedule 2.

<sup>6</sup> In some circumstances Federal environmental law may apply under the *Environment Protection and Biodiversity Conservation Act 1999*. See footnote 4 above.

<sup>7</sup> Available from the NSW legislation website <http://www.legislation.nsw.gov.au>



## Hierarchy of the planning system



## What is an Environmental Planning Instrument?

There are numerous plans, policies and instruments relating to the management of the coast. Some of these documents are legally binding on decision makers and some are not. Documents that are legally binding include Environmental Planning Instruments (EPs). EPs are documents that control development and specify land use for particular areas. There are two types of EPs; State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

## What are Local Environmental Plans?

LEPs are prepared by planning authorities (usually the local council) and are approved by the Minister for Planning. The LEP guides development in a local government area so LEPs will differ between council areas. All land, whether privately owned, publicly owned or leased is subject to the planning controls set out in the LEP unless otherwise excluded. The LEP divides land into zones and describes what types of developments are allowed within each zone. Zones also contain objectives; these objectives indicate the principal purpose of the land. If you are unsure if you need consent to do work or development on your land you should refer to your local LEP.

## How can I find out which environmental planning instruments apply to my land?

You can obtain a certificate from your local council that sets out what EPs apply to the land. These certificates are called 'planning certificates' or 'Section 149 certificates'.<sup>8</sup> You may have seen a planning certificate when you bought your property or applied for a mortgage. Although you may have previously looked at a planning certificate it is important to obtain the most up to date one you can as the planning instruments affecting your property may have changed. You can apply for a planning certificate for land that you don't own.

## What is the Standard Instrument LEP?

The NSW Government has required that all councils adapt or redraft their LEP so it complies with a standard template. Traditionally, each council has drafted its own LEP with its own zones and zone objectives. The standard instrument contains standard zones, zone objectives and permissible uses for each zone. All LEPs must adopt the form and content of the standard template. It can be adapted to suit local conditions but councils cannot add to the standard zones and must not remove the types of development that are allowed or prohibited under each zone. The standard instrument contains some clauses that relate specifically to coastal areas and sets out guidelines for development on the coast.<sup>9</sup>

<sup>8</sup> Section 149 Certificates are issued under section 149 of the *Environmental Planning and Assessment Act 1979* (NSW).

<sup>9</sup> See Standard Instrument – Principal Local Environmental Plan, cl. 5.5.  
Available at <http://www.legislation.nsw.gov.au/main.asp/view/inforce/epl+155a+2006+cd+0+N>

## What are acid sulfate soils?

Acid sulfate soils affect coastal plains, wetlands, mangrove swamps and other low-lying coastal areas. When these soils are drained or excavated and exposed to the air they react with the oxygen in the air and produce sulphuric acid. When it rains this sulphuric acid travels through the soil and is released into the waterways. This acid reduces water quality, damages sensitive ecosystems and causes fish kills. Acid sulfate soils also have a social and economic effect on the community as they have a negative impact on farming, commercial fishing and corrode infrastructure.

The Department of Planning has published a set of maps that identify areas that have a high risk of developing acid sulfate soils called Acid Sulfate Soils Planning Maps.<sup>10</sup> A planning authority must consider these maps when preparing a planning proposal. A planning authority cannot propose an intensification of land use of land identified by a LEP on the Acid Sulfate Soils Planning Maps unless they have considered an acid sulfate soil study assessing the appropriateness of that change of land use.<sup>11</sup>

## What are State Environmental Planning Policies?

State Environment Planning Policies (SEPPs) are EPIs which address planning issues of State significance. SEPPs are made by the Minister for Planning. A SEPP may prohibit or restrict certain types of development in a particular area (such as the *State Environmental Planning Policy 14 – Coastal Wetlands* which restricts certain types of development in or near listed coastal wetlands). Other SEPPs allow for certain types of development to occur despite restrictions in LEPs (such as the SEPP dealing with housing for seniors or people with a disability, which allows the Minister for Planning to approve housing developments for seniors or people with a disability on land zoned to prevent these housing developments). A SEPP usually makes the Minister for Planning the decision-maker for the types of development covered by the SEPP or it may give the Minister for Planning a concurrence or veto power.

## What if there is an inconsistency between Environmental Planning Instruments?

If there is an inconsistency between EPIs there is a general presumption that SEPPs will prevail over LEPs regardless of when the SEPP was made.<sup>12</sup> Generally, when EPIs of the same kind conflict with one another the newer EPI will prevail over the older EPI.<sup>13</sup>

## What is a Regional Strategy?

Regional Strategies aim to bring together the goals of the various State Government Departments into one coordinated document that identifies strategic priorities that will direct

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<sup>10</sup> These maps are available from your local council.

<sup>11</sup> Ministerial Direction - Acid Sulfate Soils made pursuant to s. 117 (2) of the *Environmental Planning and Assessment Act 1979* (NSW).

<sup>12</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 36 (1)(a).

<sup>13</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 36 (1)(c).

land use planning regionally for the next 25 years.<sup>14</sup> At the time of writing there were Regional Strategies in place for the Far North Coast, Mid-North Coast, Hunter, Illawarra, South Coast and Sydney-Canberra corridor.<sup>15</sup>

Regional Strategies set out which areas are to be prioritised for population and economic growth. Each Regional Strategy contains a land use strategy planning map and a vision statement for the region.

A Regional Strategy is not an EPI. Councils are required to consider a Regional Strategy when making a LEP. A planning proposal must address whether the LEP will comply with the Regional Strategy.<sup>16</sup> The Minister for Planning can require that the LEP be consistent with the Regional Strategy.<sup>17</sup> As a Regional Strategy identifies centres for economic and population growth, the council may be required to make its LEP consistent with these targeted growth areas.

## What is a Development Control Plan?

Some parts of a local government area are subject to Development Control Plans (DCPs). DCPs contain more detailed requirements for the development that is allowed to take place under the other EPIs, particularly LEPs. DCPs set limits and standards for developments such as height, roof lines and floor space ratios.

It is important to note that DCPs are not legally binding but must be considered by decision-makers who are assessing development applications.<sup>18</sup>

# Chapter 2:

## Laws and policies that apply to coastal communities

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As well as the standard planning laws and policies that apply to all communities there are some additional coastal laws and policies applying specifically to coastal communities.

### 2.1 The *Coastal Protection Act 1979*

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The *Coastal Protection Act 1979* (NSW) does a number of important things. Firstly it defines the boundaries of the coastal zone and provides for the preparation of Coastal Zone

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14 NSW Department of Planning, *Planning Circular PS 07 – 006 Implementation of Regional Strategies – Ministerial Direction*, [http://www.duap.nsw.gov.au/planningsystem/pdf/circulars/ps07\\_006\\_s117\\_regstrat.pdf](http://www.duap.nsw.gov.au/planningsystem/pdf/circulars/ps07_006_s117_regstrat.pdf)

15 To access the Regional Strategy for your area, contact your local council, the Department of Planning or go to <http://www.planning.nsw.gov.au/PlansforAction/Regionalplanning/tabid/161/Default.aspx>

16 *Environmental Planning and Assessment Act 1979* (NSW), s. 55(2)(c).

17 Ministerial Direction No. 30 – Implementation of Regional Strategies made pursuant to s. 117(2) of the *Environmental Planning and Assessment Act 1979* (NSW).

18 *Environmental Planning and Assessment Act 1979* (NSW), s. 79C (1)(a)(iii).

Management Plans by local councils. Secondly it contains provisions that place additional checks on local councils when determining development applications. Thirdly it provides a means of restraining or remedying damage to the coast.

## Coastal Zone Management Plans

A Coastal Zone Management Plan is prepared by the council in partnership with the NSW Department of Environment, Climate Change and Water.<sup>19</sup> The purpose of a Coastal Zone Management Plan is to put in place a structured plan for the protection of the beach or foreshore. The plan sets out actions that can be taken to avoid or mitigate damage that can occur during storm events. The plan must address three things:

1. How the beach environment and amenity will be protected;
2. What emergency actions are permitted during periods of beach erosion, such as an extreme storm event; and
3. How to ensure continued public access to beaches, headlands and waterways.<sup>20</sup>

Draft Coastal Zone Management Plans must be placed on public exhibition and during this time any person can make a submission about the draft plan. Although they are prepared by local councils, all Coastal Zone Management Plans must be approved by the Minister for Environment.

Coastal Zone Management Plans are legally binding and can be enforced by the Minister for Environment or the relevant council in the Land and Environment Court.<sup>21</sup>

### ***Case Study: Coastal erosion at Lake Cathie***

Lake Cathie in the Port Macquarie Hastings Council local government area has been suffering serious coastal erosion. Beach access paths and storm water outlets have been destroyed. Infrastructure, such as power poles and water services, are under threat and private dwellings are at risk of losing their beach access. There has also been damage to the recreational amenity of the beach. These impacts are likely to increase given the projected impacts of climate change and sea level rise. Port Macquarie Hastings Council commissioned a coastline hazard study and has exhibited a draft Lake Cathie Coastline Management Study (2009) to assess the options and find a solution to the erosion problem at Lake Cathie. There has been a strong community response and a Coastal Zone Management Plan is being prepared.

<sup>19</sup> A council may choose to prepare a Coastal Zone Management Plan or it may be directed to do so by the Minister for Environment.

<sup>20</sup> *Coastal Protection Act 1979* (NSW), s. 55C.

<sup>21</sup> *Coastal Protection Act 1979* (NSW), s. 55L and 55K.

## Restoration Orders

The Minister for Planning or a local council can bring proceedings in the Land and Environment Court to order the cleanup of any material that has caused damage to a beach. This includes the removal of any works used to prevent beach erosion during a storm event.<sup>22</sup> Further, the Court can order a person to rectify any damage and prevent recurrence of harm to the beach.

## Concurrence of Minister for Environment

If the Minister for Environment issues a notice to a council about a particular development, the council is prohibited from carrying out the development or approving the development without the agreement of the Minister for Environment.<sup>23</sup>

## 2.2 State Environmental Planning Policies (SEPPs)

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There are lots of SEPPs, some of which apply specifically to coastal areas. Others have a more general application but are particularly relevant to coastal areas. Below are some of the most significant SEPPs that apply to coastal areas.

### *State Environmental Planning Policy 71 - Coastal Protection*

SEPP 71 – Coastal Protection applies to land within the coastal zone.<sup>24</sup> If SEPP 71 applies then the consent authority must consider certain matters set out in the SEPP when coming to a decision about a development application. The decision maker's duty to consider or take into account those matters does not mean the development must be rejected if the development has an adverse impact on those matters; it just means that those matters must be considered before a decision is arrived at. The matters that a decision maker must take into account when considering a development application in the coastal zone include:<sup>25</sup>

- Retaining public pedestrian access to and along the coastal foreshore;
- Providing opportunities for new public access to the coastal foreshore;
- Any detrimental impact a development may have on the foreshore;
- Scenic qualities of the coastline;
- The conservation of threatened species;
- Protection of wildlife corridors; and
- The likely impact of coastal processes and coastal hazards on the development.

SEPP 71 prevents the approval of development, if in the opinion of the consent authority, the development will:

- Obstruct or diminish public access to the coastal foreshore;<sup>26</sup>

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<sup>22</sup> *Coastal Protection Act 1979 (NSW)*, s. 56A.

<sup>23</sup> *Coastal Protection Act 1979 (NSW)*, s. 38.

<sup>24</sup> See Introduction for a definition of the coastal zone.

<sup>25</sup> *State Environmental Planning Policy 71 - Coastal Protection*, cl. 8.

<sup>26</sup> *State Environmental Planning Policy 71 - Coastal Protection*, cl. 14.

- Result in effluent discharge that negatively affects water quality;<sup>27</sup> or
- Involve a discharge of untreated storm water into the sea, beach, estuary, coastal lake or creek.<sup>28</sup>

### ***What is a sensitive coastal location?***

A sensitive coastal location is land within 100m of the mean high water mark, a coastal lake, a Ramsar Wetland, a World Heritage property or land within 100m of a SEPP I4<sup>29</sup> wetland.<sup>30</sup> If development is proposed in one of these sensitive coastal locations then a copy of the development application must be referred to the Department of Planning for comment by the Director-General.<sup>31</sup>

### ***State Environmental Planning Policy (Major Development) 2005***

The Major Development SEPP specifies what developments can be classified as major projects. Major projects are assessed by the Minister for Planning under Part 3A of the EP&A Act.<sup>32</sup> The Major Development SEPP states that Part 3A of the EP&A Act applies to developments that, in the opinion of the Minister, are of a kind described in Schedules 1 - 3 or 5 of the SEPP.<sup>33</sup>

- Schedule 1 deals with projects of a particular type such as developments for the purposes of residential, commercial or retail projects with a capital investment value of more than \$100 million that the Minister determines are important in achieving State or regional planning objectives;
- Schedule 2 deals with projects on specified sites such as coastal areas and the Sydney Harbour foreshore site;
- Schedule 3 deals with State Significant sites such as the Sydney Opera House; and
- Schedule 5 deals with projects that are deemed to be critical infrastructure.

Many coastal developments qualify as major projects under this SEPP which has implications for how those developments are assessed and the opportunities for public participation in the decision making process. Even if a development does not qualify as a major project under this SEPP, the Planning Minister can still declare it to be a major project if he or she believes it is of State or regional planning significance.<sup>34</sup>

### ***State Environmental Planning Policy (Infrastructure) 2007***

The Infrastructure SEPP deals with a wide range of State infrastructure such as telecommunications facilities, sewerage works and stormwater management works. It specifies

27 *State Environmental Planning Policy 71 - Coastal Protection*, cl. 15.

28 *State Environmental Planning Policy 71 - Coastal Protection*, cl. 16.

29 *State Environmental Planning Policy 14 - Coastal Wetlands*.

30 See *State Environmental Planning Policy 71 - Coastal Protection*, cl.3 (Definitions) for a full description of what land is within a 'sensitive coastal location'.

31 *State Environmental Planning Policy 71 - Coastal Protection*, cl. 2.

32 See Chapter 4 for a discussion of Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW).

33 *State Environmental Planning Policy (Major Development)*, cl. 6.

34 *Environmental Planning and Assessment Act 1979* (NSW), s. 75B.

when development consent is (and is not) required for such development to be carried out in certain zones.

### *State Environmental Planning Policy 14 – Coastal Wetlands*

The Coastal Wetlands SEPP aims to protect and preserve coastal wetlands. Around 7% of coastal wetlands in NSW are listed under SEPP 14. If a person wants to clear land, construct a levee, drain land or fill land that is part of a SEPP 14 wetland they will need consent from the council and agreement from the Department of Planning. The Director of National Parks and Wildlife must also be given a copy of the development application.<sup>35</sup> Works in a SEPP 14 wetland are considered to be 'designated development' and will require an Environmental Impact Statement to be lodged with the development application.<sup>36</sup> The public also has a right to comment on designated developments.

The Department of Planning and councils have maps that show the locations of SEPP 14 coastal wetlands.

### *State Environmental Planning Policy 26 – Littoral Rainforests*

A littoral rainforest is a particular type of rainforest which is adapted to withstand coastal conditions involving harsh, salty, drying winds. SEPP 26 aims to protect littoral rainforests. Development or works within a littoral rainforest are deemed to be 'designated development'<sup>37</sup> and any development consent issued by council will require the agreement of the Minister for Planning.

The Department of Planning and councils have maps that show the locations of littoral rainforests for the purposes of SEPP 26.

### *State Environmental Planning Policy 62 – Sustainable Aquaculture*

The Sustainable Aquaculture SEPP establishes what types of aquaculture are allowed and the minimum performance criteria for those aquaculture activities.<sup>38</sup> Aquaculture is defined in the SEPP as 'cultivating fish or marine vegetation for the purposes of harvesting and selling them' and 'keeping fish in a confined area for a commercial purpose'. Aquaculture also requires a permit from the NSW Department of Industry and Investment – Primary Industries.<sup>39</sup> The specific local government areas to which the SEPP applies are set out in Schedules 1 and 2 to the SEPP.

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<sup>35</sup> *State Environmental Planning Policy 14 – Coastal Wetlands*, cl. 8.

<sup>36</sup> *State Environmental Planning Policy 14 – Coastal Wetlands*, cl. 7(3). See Chapter 5 for more information on designated development and Environmental Impact Statements.

<sup>37</sup> *State Environmental Planning Policy 26 – Littoral Rainforests*, cl. 6. See Chapter 5 for more information on designated development and Environmental Impact Statements.

<sup>38</sup> *State Environmental Planning Policy 62*, cl. 7(2), 8(2), 11.

<sup>39</sup> *Fisheries Management Act 1994* (NSW), s. 144.



## *State Environmental Planning Policy 50 - Canal Estate Development*

Canal estate developments are prohibited by SEPP 50. A canal estate development is a development that incorporates a canal that is interconnected with a natural waterway or groundwater.<sup>40</sup> This SEPP applies to the whole State.<sup>41</sup>

## *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*

This SEPP regulates and provides design standards for seniors living developments. The SEPP allows the Minister for Planning to approve housing developments for seniors or people with a disability on land zoned to prevent such housing development.<sup>42</sup> A development for seniors or people with a disability must comply with the minimum requirements set out in the SEPP. The SEPP applies to land zoned in a LEP as an urban area or land adjoining land zoned as an urban area.<sup>43</sup>

## **2.3 The NSW Coastal Policy**

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*The NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast* (Coastal Policy) aims to support the ecologically sustainable development of the NSW coastline.

The Coastal Policy implements a number of initiatives, including the following:

1. A ban on new sand mining projects in coastal national parks and nature reserves and controls over sand mining in environmentally sensitive areas;
2. A ban on new canal estate developments;
3. A prohibition on development on beach foreshore dunes; and
4. A requirement that new tourist developments not impede public access to beaches and foreshores.

The Coastal Policy itself is not legally enforceable. The implementation of the policy occurs through the following indirect measures:

1. All Local Environmental Plans for local government areas in the coastal zone must give effect to the policy unless they can justify a departure;<sup>44</sup>
2. A council must consider the Coastal Policy when determining a development application;<sup>45</sup> and
3. Local councils and State agencies must address in their annual reports how they are going to implement the Coastal Policy.

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<sup>40</sup> *State Environmental Planning Policy 50*, cl. 3.

<sup>41</sup> *State Environmental Planning Policy 50*, cl. 4.

<sup>42</sup> *State Environmental Planning Policy (Housing for Seniors or People with a Disability)*, cl. 5 and 15.

<sup>43</sup> Some local government areas are excluded from the operation of *State Environmental Planning Policy (Housing for Seniors or People with a Disability)*, cl. 4.

<sup>44</sup> *Ministerial Direction – Coastal Protection* made pursuant to s. 117(2) of the *Environmental Planning and Assessment Act 1979* (NSW). *Environmental Planning and Assessment Act 1979* (NSW) s.55 (2)(c).

<sup>45</sup> *Environmental Planning and Assessment Regulation 2000*, cl. 92(1)(a).

## 2.4 Coastline Management Manual 1990

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The NSW *Coastline Management Manual* is used by councils when preparing Coastline Management Plans.<sup>46</sup> It aims to encourage councils to allow development that is compatible with coastal hazards. It also describes methods to reduce the impact of coastal hazards on existing development. The manual describes each method of dealing with coastal hazards and the positives and negatives of using each option. Some of these suggested options include the voluntary purchase of property at equitable prices and the construction of beach improvements to protect or enhance the State's most heavily used beaches.<sup>47</sup>

## Chapter 3: Public land

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Land owned by, or under the control of, the local council must be classified as either community or operational land.<sup>48</sup>

### What is community land?

Community land is identified as council-owned land that is set aside for use by the general public. Community land is normally open to the public; such as a park, sports ground, bushland reserve or foreshore area. There are a number of restrictions on the way that councils can deal with community land.<sup>49</sup>

- Community land cannot be sold, exchanged or otherwise disposed of;
- Community land must be managed in accordance with a plan of management;<sup>50</sup>
- A lease or licence can only be granted over community land for purposes expressly authorised by the plan of management; and
- Community land may only be dedicated as a public road where the road is necessary for the enjoyment of the land.

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46 NSW Coastline Management Manual 1990. Available at <http://www.environment.gov.au/coasts/publications/nswmanual/index.html>

47 The *Coastline Management Manual 1990* has been under review for some time. Recent indications from the Department of Environment, Climate Change and Water (DECCW) state that the Manual will be replaced with new Coastal Zone Management Guidelines. Please refer to the DECCW website for updates : [www.environment.nsw.gov.au/coasts/coastalerosionmgmt.htm](http://www.environment.nsw.gov.au/coasts/coastalerosionmgmt.htm)

48 *Local Government Act 1993* (NSW), ss. 25, 26.

49 *Local Government Act 1993* (NSW), Part 2.

50 You can find a copy of the plan of management on the council website or by visiting the council and requesting a copy.

## How is community land identified?

Community land is normally indicated in an LEP or declared by a special resolution of council.

## What is operational land?

Operational land is land that is owned or controlled by the council for use by the council. It is often used to help council to carry out its functions; for example, the Council Depot. Operational land may be sold and leased by council in the same way other landowners can deal with their land, including for private purposes.

## What is Crown land?

Crown land is owned by the NSW State Government. The NSW Department of Lands is responsible for the management of Crown land. There are a number of principles that apply to the management of Crown lands:<sup>51</sup>

- Environmental protection principles must be observed in the management and administration of Crown land;
- Natural resources (water; soil, flora, fauna etc) are to be conserved wherever possible;
- Public use and enjoyment is to be encouraged;
- Multiple uses are to be encouraged;
- Resources are to be sustained for ever; and
- Where Crown land is occupied, used, sold, leased, licensed or otherwise dealt with it should be done so in the best interests of the State, consistent with the above principles.

Crown lands in some cases may be managed by the local council.

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<sup>51</sup> *Crown Land Act 1989* (NSW), s. 11.



## PART TWO: *Development and the Coast*

The EP&A Act sets out the procedures that must be followed by a decision maker when deciding whether to approve a development. These procedures relate to development assessment and include; whether the development needs to be advertised to the community, what sort of environmental impact assessment needs to take place, whether the community has the right to comment on the development application and whether the community has the right to appeal a decision to approve the application. There are different procedures and decision makers depending on the type or location of the development proposed.

There are three types of development assessment processes set out in the following parts of the *Environmental Planning and Assessment Act 1979*:

- Part 3A;
- Part 4; and
- Part 5.

The different types of development assessment are explained on the following pages.

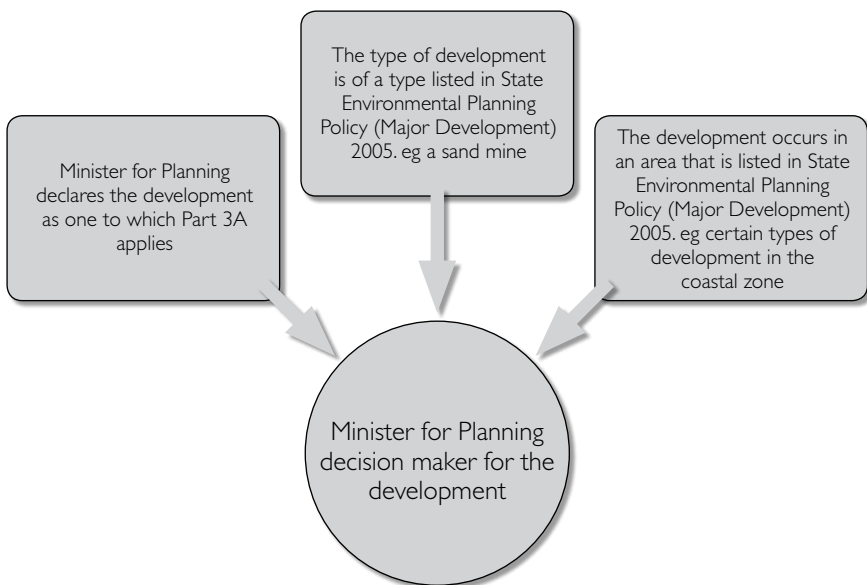
## Chapter 4:

# Major development assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*

Part 3A projects are often large government projects such as roads, pipelines and desalinisation plants but they can also be private developments that the Minister for Planning considers to be of a State or regional planning significance, such as sand or coal mines or even a coastal subdivision. Before a development can be assessed under Part 3A, it must first qualify as a development to which Part 3A applies.

### How does a development become a Part 3A project?

There are two ways a project can qualify, either under the *SEPP (Major Development) 2005*, or by order of the Minister for Planning. A development will qualify under the SEPP if it is in the opinion of the Minister of a type listed in *SEPP (Major Development) 2005*.<sup>52</sup> If the development is not of a type listed under the Major Development SEPP but the Minister for Planning thinks the development should be assessed under Part 3A, the Minister can publish an order in the Government Gazette to that effect. To do this, the Minister must form the opinion that the development is of State or regional planning significance.<sup>53</sup> This has meant that many developments have qualified as Part 3A developments – over 700 since 2006.



<sup>52</sup> See Chapter 2.2 for an explanation of *State Environmental Planning Policy (Major Development) 2005*.

<sup>53</sup> *Environmental Planning and Assessment Act 1979*, (NSW) s. 75B(2)(a).

## What environmental assessment occurs under Part 3A?

Environmental assessment reports are the main tool for the community to discover what the impacts of the proposed development may be. The Director-General of the Department of Planning sets the environmental assessment requirements (EARs), also known as Director-General's Requirements, for the project. The EARs are wholly determined by the Director-General on a case by case basis. Relevant public authorities, like the local council and other State agencies are consulted by the Director-General when the EARs are being set.

Once the applicant has carried out the relevant environmental assessment, the Director-General prepares an environmental assessment report setting out whether the environmental assessment complies with the EARs. The environmental assessment and the environmental assessment report are placed on public exhibition. The public has at least 30 days to comment by making submissions to the Director-General. The applicant then has the opportunity to respond to the public submissions by preparing a preferred project report which will set out how any adverse social, economic or environmental impacts will be minimised.

## How can I make a submission?

After the environmental assessment has been submitted by the developer, the application and environmental assessment will be put on public exhibition. During the 30-day exhibition period any person can comment on the proposed development. Comment is usually by way of written submission. In some cases a public hearing may be held. The Department of Planning website has a Major Project Tracking System which allows you to track the progress of major projects and access the relevant documents. You can make submissions directly from this site.<sup>54</sup> Alternatively, you can send your submission to the Director-General of the Department of Planning.

## What is a concept plan?

A unique feature of Part 3A is that it allows for certain projects to be assessed from a concept plan. A concept plan sets out the scope of a proposed development in general terms but does not contain specific details.<sup>55</sup> Concept plans are usually used for big projects that involve many separate stages of development or many separate developments in one large project.<sup>56</sup> The environmental assessment for concept plans can only be carried out in a preliminary way until the proposal is further refined and assessed at the project application stage. Further development approvals will be needed as each stage of the project is completed and additional environmental assessments may then be carried out. However, the Minister for Planning may specify that no additional environmental assessments will be required when the details are decided.<sup>57</sup>

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<sup>54</sup> See <http://majorprojects.planning.nsw.gov.au/page/>

<sup>55</sup> *Environmental Planning and Assessment Act 1979* (NSW) s. 75P.

<sup>56</sup> *Environmental Planning and Assessment Act 1979* (NSW) s. 75P.

<sup>57</sup> *Environmental Planning and Assessment Act 1979* (NSW) s. 75P(1)(c).

## Obligations to disclose political donations

There is an obligation contained in the EP&A Act and the *Local Government Act 1993* (NSW) that anyone who has a financial interest in a development application, rezoning application or modification application is to disclose any political donations they made to either a Minister, Councillor or council employee within the previous two years or before the application is decided. Donations made to a political party, elected member, group or candidate must also be reported with the application. Any gift with a value of \$1000 or greater must be reported. This amount includes the aggregate value of a number of smaller gifts. The disclosure must accompany the development application or, if the donation was made after the development application has been lodged, the disclosure must be made within 7 days of the donation being received.

## Chapter 5: Local development assessed under Part 4 of the *Environmental Planning and Assessment Act 1979*

Part 4 sets out the procedure for assessing and approving local development. Part 4 development applications comprise the majority of development applications. Your local council or a delegate of the council is the decision maker for the development application. Part 4 developments include exempt and complying development, integrated development, advertised development and designated development. Sometimes a development will not fit into one of these categories, but will still be assessed under Part 4. The main categories of development under Part 4 are described below.

### What is exempt and complying development?

The categories of exempt development and complying development are included in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and may also be in your Local Environmental Plan or your Development Control Plan.<sup>58</sup>

#### *What is exempt development?*

To be exempt development, the development must be of a type listed as 'exempt' under the SEPP or the relevant LEP. Usually, the development must also meet the provisions of the *Building Code of Australia* and if there is no relevant code the development must be structurally sound. Exempt developments do not need to be assessed and do not require approval. Exempt development is development that has a low environmental impact.

<sup>58</sup> At the time of writing the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* was running in dual operation with Local Environmental Plans' exempt and complying development categories. It is unclear how long the dual operation will continue. While the dual operation continues homeowners can choose to use the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or the provisions of the Local Environmental Plan. Eventually exempt and complying development provisions in Local Environmental Plans will cease to apply. See [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) for the different categories of exempt and complying development listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

### *What is complying development?*

Complying development is fairly routine development such as extensions to houses and general housing on a range of lot sizes. A very simple assessment process is followed and a certificate can be issued by either a council or an accredited certifier.<sup>59</sup> The process is much quicker than for other types of development. To be complying development, the development must be permissible with consent in the zone where it will be carried out and must meet the provisions of the *Building Code of Australia*.

Designated developments cannot be further classified as exempt or complying.<sup>60</sup>

### **What is integrated development?**

Integrated development is development that needs extra approvals from other public authorities, such as an environment protection licence to authorise pollution.<sup>61</sup>

### **What is advertised development?**

Advertised development is development that needs to be publicly notified in accordance with the relevant Development Control Plan.<sup>62</sup>

### **What is designated development?**

Designated development tends to be high impact development. The types of development that fit into this category are listed under Schedule 3 of the EP&A Regulation and include developments such as mines and other extractive industries, some marinas and some aquaculture facilities. An environmental impact statement is required and the public must be notified and given the opportunity to comment on the application. Those who write submissions objecting to the development can bring objector appeals against a decision to grant consent.<sup>63</sup> Many designated developments also qualify as major projects and are now assessed under Part 3A instead.

### **What environmental assessment occurs under Part 4?**

Environmental assessment reports are the main tool for the community to discover what the impacts of a proposed development may be. For Part 4 development, one or more of the following reports must be lodged with the development application:

1. Statement of Environmental Effects (SEE) – An application for all developments apart from designated development must be accompanied by a SEE. The SEE must indicate the environmental impacts of the development, how the impacts have been identified and the steps that will be taken to protect, or to lessen the harm to the environment.

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<sup>59</sup> *Environmental Planning and Assessment Act 1979 (NSW)* s. 85A.

<sup>60</sup> *Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, cl. 1.16, *Environmental Planning and Assessment Act 1979 (NSW)* s.76A.

<sup>61</sup> *Environmental Planning and Assessment Act 1979 (NSW)* s. 85A.

<sup>62</sup> See Chapter 1.1 for a description of a Development Control Plan cl. 1.16 and 1.18.

<sup>63</sup> *Environmental Planning and Assessment Act 1979 (NSW)* s. 98.



2. Environmental Impact Statement (EIS) - An EIS is required for a designated development and will give a detailed analysis of all the potential environmental impacts of the development.  
  
The type of information that must be included in an EIS includes the following:<sup>64</sup>
  - A description of the activity;
  - A description of the environment which is likely to be affected by the activity;
  - An analysis of the likely impacts of the activity;
  - An analysis of the measures proposed to reduce the environmental impacts of the activity; and
  - A full list of approvals that must be obtained before the activity can be carried out.
3. Species Impact Statement (SIS) – An SIS must be prepared if the land to be developed contains a critical habitat or is likely to significantly affect a threatened species, population or ecological community listed under the *Threatened Species Conservation Act 1995* (NSW).<sup>65</sup> An SIS must also be prepared if there is likely to be an effect on threatened fish and marine vegetation.<sup>66</sup>
4. Biobanking Statement – A Biobanking Statement is a voluntary alternative to the threatened species components of environmental assessment. It can be used instead of an SIS.<sup>67</sup>

### **Making submissions based on impact and amenity**

When making a submission about a development application, a good way to articulate your points is to base them around impacts of the development and the affect of the development on the amenity of the surrounding area.

Impact is the overall affect of the development on you or your community.

Amenity refers to features and advantages of a neighbourhood or locality that are considered desirable to maintain the character and quality of the area. Some of the most common amenity issues that arise are; view sharing, loss of privacy, over shadowing or loss of solar access and loss of character of the neighbourhood.

### **What if a development is modified after it is approved?**

If there is a proposal to make minor changes to a development, the proponent may not need to lodge a development application. Instead, they may only need to lodge an application to modify a development consent. These are often referred to as section 96 modifications because the application will be made under section 96 of the EP&A Act. A section 96 modification can be made provided the changes proposed will result in substantially the same

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<sup>64</sup> *Environmental Planning and Assessment Regulation 2000*, Schedule 2.

<sup>65</sup> The *Threatened Species Conservation Act 1995* (NSW) lists the species, populations and ecological communities that are threatened, critically endangered and vulnerable in NSW. It also lists Key Threatening Processes. Section 110 of the Act sets out what a Species Impact Statement must contain.

<sup>66</sup> *Fisheries Management Act 1994* (NSW)

<sup>67</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127ZO (1)-(2), (4)-(5); s. 127ZP (1)-(13).

development as the one that currently exists.<sup>68</sup> An application to modify a development must be advertised in accordance with the relevant DCP.

### **What is ecologically sustainable development (ESD)?**

One of the objects of the EP&A Act is to encourage ecologically sustainable development.<sup>69</sup>

The four principles of ESD are:<sup>70</sup>

- The precautionary principle  
Where there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In practice, this means that public and private decisions should be guided by a careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment and an assessment of the risk weighted consequences of various options.
- Intergenerational equity  
The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for future generations.
- Conservation of biological diversity and ecological integrity should be a fundamental consideration.
- Improved valuation, pricing and incentive mechanisms  
Environmental factors should be included in the valuation of assets and services.

## **Chapter 6:**

# **Infrastructure development assessed under Part 5 of the *Environmental Planning and Assessment Act 1979***

Part 5 sets out the process for assessing developments that do not require development consent under Part 4. Part 5 developments are normally infrastructure developments carried out by a government agency. An example of a Part 5 development is where the local council proposes the construction of roads or the local electricity authority proposes new electricity infrastructure. These developments do not go through a development approval process. However the government agency must still examine and take into account the likely impact of that activity on the environment.<sup>71</sup>

<sup>68</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 96(2)(a).

<sup>69</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 5(a)(vii).

<sup>70</sup> *Protection of the Environment Administration Act 1991* (NSW) s. 6(2).

<sup>71</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 111(1).

The government agency typically undertakes an initial assessment called a Review of Environmental Factors (REF). If the REF highlights that the activity is likely to have a significant effect on the environment then an Environmental Impact Statement (EIS) must be prepared and placed on public exhibition for 30 days.<sup>72</sup> If the REF or the EIS reports that there is likely to be a significant impact on threatened species or ecosystems then a Species Impact Statement must also be prepared. A Biobanking Statement is an alternative to the SIS.

After the environmental assessments have been completed the government agency may decide to proceed as planned, to not undertake the activity or to make changes to the activity to reduce its environmental impact.

## Chapter 7:

# Coastal development under Federal law

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The Federal Government has the power to regulate and refuse some developments on the coast under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The Federal Environment Minister has the power to regulate and assess new developments that are likely to have a significant effect on one or more of the following:

1. A World Heritage site;
2. A Natural Heritage place;
3. A Ramsar wetland;
4. Nationally listed threatened species or ecological communities;
5. Listed migratory species;
6. Nuclear activities (including uranium mines); and
7. Commonwealth marine areas.<sup>73</sup>

The seven matters listed above are known as 'triggers'. Although there is no direct trigger for coastal developments, a proposed coastal development may have a significant effect on one of the 'triggers' above and will require approval from the Federal Minister for the Environment before it can go ahead. The Federal approval is in addition to any State or local council approvals that may be needed.

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<sup>72</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 112 .

<sup>73</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth); Part 3.



## PART THREE: *Managing the Coast*

The following chapters provide brief information on some of the laws dealing with threats to the health of the environment and communities in coastal areas. For more detailed information go to the EDO (NSW) online fact sheets available at: [www.edo.org.au/edonsw/site/factsheets.php](http://www.edo.org.au/edonsw/site/factsheets.php)

# Chapter 8:

## Protected plants and animals

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Native coastal plants and animals (biodiversity) are a key drawcard for the tourist industry and vastly enrich the lives of people living in coastal areas. There are many threats to native plants and animals in NSW generally. In particular, climate change is likely to have a significant impact on the viability of many plant and animal species. The Commonwealth and NSW governments have set up regimes for the recognition and management of particularly threatened species.

Native animals and certain native plants are protected in New South Wales under the *National Parks and Wildlife Act 1974* (NSW). There are criminal penalties for harming protected native plants and animals without a licence.<sup>74</sup> There are also more severe penalties for harming threatened species without a licence.<sup>75</sup>

Threatened species are also protected by the *Threatened Species Conservation Act 1995* (NSW) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

### How do NSW laws protect native plants and animals?

In NSW, the Director-General of the Department of Environment, Climate Change and Water (DECCW) is responsible for the protection of native animals and plants.

It is an offence to pick or have in your possession a protected native plant without a licence issued by DECCW, unless the native plant is grown on private property and has been picked by or with the consent of the owner or if that plant is cultivated as a hobby.<sup>76</sup>

It is an offence to harm native animals.<sup>77</sup> This includes harm by using a substance, an animal, a gun, net or trap. It is an offence to buy, sell or possess native animals.<sup>78</sup>

The DECCW issues licences to harm native animals.<sup>79</sup>

A person will not have committed an offence by harming or killing native animals if:

- They had a licence;<sup>80</sup>
- The work causing the harm was conducted in accordance with an approval to carry out a development;<sup>81</sup>
- They had a conservation agreement or a joint management agreement;<sup>82</sup> or

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<sup>74</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 98, 99, 103, 110, 112, 117 and 118A.

<sup>75</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 118A, 118C, 118D.

<sup>76</sup> *National Parks and Wildlife Act 1974* (NSW), s. 117.

<sup>77</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 98 and 99.

<sup>78</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 101, 104, 105 and 105A.

<sup>79</sup> *National Parks and Wildlife Act 1974* (NSW), Part 9, Division 2.

<sup>80</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 98(3) and 99(2).

<sup>81</sup> *National Parks and Wildlife Act 1974* (NSW), s. 98(5).

<sup>82</sup> *National Parks and Wildlife Act 1974* (NSW), s. 98(4).

- The animal was not capable of fending for itself in its natural habitat.<sup>83</sup>

## How are threatened species protected?

Threatened species are protected under both NSW and Federal laws.

### *NSW Protection*

The NSW *Threatened Species Conservation Act 1995* (TSC Act) and the *Fisheries Management Act 1994* (FM Act) contain lists of threatened plants and animals, including marine species.

It is a criminal offence to:

- Harm threatened or endangered species from an endangered population or an endangered ecological community;<sup>84</sup>
- Pick any plant from an endangered population or an endangered ecological community;<sup>85</sup> or
- Trade, buy or sell any threatened or endangered species.<sup>86</sup>

There are similar offences in relation to fish and marine vegetation.<sup>87</sup> There are serious penalties for breaching threatened species laws.

### *Federal Protection*

Threatened species are protected under Federal law by the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).<sup>88</sup> The EPBC Act provides for the listing of nationally threatened native species and ecological communities, native migratory species and marine species.<sup>89</sup>

Under the EPBC Act, listed threatened species and ecological communities are recognised as a matter of 'national environmental significance'. Any action that is likely to have a significant impact on listed threatened species or ecological communities must be referred to the Federal Environment Minister and undergo an environmental assessment and approval process under the EPBC Act. It is an offence to undertake an action that will have a significant impact on a nationally listed threatened species or an ecological community without first obtaining an approval from the Minister for Environment.

Under the EPBC Act, it is an offence to do the following in relation to nationally listed threatened species:

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<sup>83</sup> *National Parks and Wildlife Act 1974* (NSW), s. 101.

<sup>84</sup> *National Parks and Wildlife Act 1974* (NSW), s. 118A.

<sup>85</sup> *National Parks and Wildlife Act 1974* (NSW), s. 118A.

<sup>86</sup> *National Parks and Wildlife Act 1974* (NSW), s. 118B.

<sup>87</sup> *Fisheries Management Act 1994* (NSW), ss. 220ZA, 220ZB, 220ZC, 220ZD.

<sup>88</sup> Requirements relating to matters of national environmental significance are outlined under Division 1 of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999*. Sections 18 and 18A specifically relate to threatened species.

<sup>89</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Part 13, Division 1, Subdivision A.

- To recklessly kill or injure a threatened species or community, migratory species or listed marine species;<sup>90</sup>
- To recklessly take any threatened species or community, migratory species or listed marine species;<sup>91</sup> and
- To trade in any threatened species or community, migratory species or listed marine species.<sup>92</sup>

## How do I know if an activity is going to affect a threatened species?

It is sometimes hard for a non-expert to decide if a development is going to affect threatened species. For a start, you may not know whether or not there are any threatened species on the property. If the activity does not require development consent, it may be advisable to seek the advice of an environmental consultant on the existence of threatened species in your area. There are many environmental consultants operating in NSW, some of which specialise in threatened species. You can find them on the internet or in the Yellow Pages directory. You can also search the Department of Environment, Climate Change and Water Threatened Species Database for information on threatened species in your area.<sup>93</sup>

If the activity does require development consent and there are threatened species on the property, an assessment of the likelihood that the development will have a significant effect on the threatened species (also known as a 'seven part test'<sup>94</sup>) must be carried out. This is required unless the owner obtains a BioBanking statement, or the development is being dealt with as a major project under Part 3A of the EP&A Act.<sup>95</sup>

## What is Biocertification?

The biodiversity certification (biocertification) process gives the Minister for the Environment the ability to confer biodiversity certification on specified land if he/she is satisfied that it will lead to the overall improvement or maintenance of biodiversity values.<sup>96</sup> An assessment methodology is being developed to guide the Biocertification process.<sup>97</sup>

The effect of biocertification is that any development for which development consent is required will be taken to be development which is not likely to significantly affect threatened species, populations or ecological communities or their habitat, thereby exempting the development from the need for a species impact statement.

<sup>90</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 196, 196A, 211, 211A, 254, 254A.

<sup>91</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 196B, 196C, 211B, 211C, 254B, 254C.

<sup>92</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 196D, 196E, 211D, 211E, 254D, 254E.

<sup>93</sup> Available at: [www.threatenedspecies.environment.nsw.gov.au/tsprofile/home\\_species.aspx](http://www.threatenedspecies.environment.nsw.gov.au/tsprofile/home_species.aspx)

<sup>94</sup> The 'seven part test' lists the matters that must be taken into account when determining whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats. See *Environmental Planning and Assessment Act 1979* (NSW), s. 5A(2).

<sup>95</sup> See Chapter 4 for more information on major projects under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW).

<sup>96</sup> *Threatened Species Conservation Act* (NSW) s. 126(H), (I).

<sup>97</sup> Please refer the Department of Environment, Climate Change and Water website for more information: [www.environment.nsw.gov.au/biocertification/index.htm](http://www.environment.nsw.gov.au/biocertification/index.htm)

## What is BioBanking?

The Biodiversity Banking and Offsets Scheme (BioBanking) is a market-based offsetting scheme. On one side, landowners create biodiversity credits by agreeing to protect the biodiversity on their land and then sell those credits to pay for the management of the land for conservation in perpetuity. On the other side, a developer can purchase credits to offset the impact of the destruction of biodiversity on another parcel of land. Other purchasers of credits may include conservationists, philanthropists or government agencies interested in conserving biodiversity in perpetuity.

A landholder establishes a biobank site by entering into an agreement with the Minister for Climate Change and the Environment to protect and manage the biodiversity values of their land. In return, the landholder is issued with biodiversity credits and must agree to undertake management actions. The number and type of credits depends on many factors, including the quality of the habitat and the threatened species present.

A developer wishing to harm biodiversity can undertake a biobanking assessment of their site and then apply to the Department of Environment, Climate Change and Water (DECCW) for a biobanking statement. Most importantly, a biobanking statement can only be issued in respect of a proposed development if it will improve or maintain biodiversity values.<sup>98</sup> To determine whether this is the case, an assessment is undertaken using the BioBanking Assessment Methodology. If the developer's application is successful, the biobanking statement will list how many biodiversity credits, and what type, the developer must buy (and retire) in order to offset the impacts of the development on threatened species.<sup>99</sup> The price for credits will be determined by market mechanisms of supply and demand.

Participation in the BioBanking Scheme is voluntary. A developer can choose to have threatened species assessed via Biobanking or the assessment of significance process. DECCW keeps a public register of all biobanking statements on its website.

## How are koalas protected?

Koalas are protected under the TSC Act. They are also given special protection on private property under the *State Environmental Planning Policy No 44 – Koala Habitat Protection*.

If land is over 1 hectare and contains 'core' koala habitat, the council cannot grant consent to carry out development on that land unless a Plan of Management has been prepared. The Plan of Management may restrict or impose conditions on the development for the protection of koala habitat. The Plan of Management may cover the whole local government area or a particular parcel of land. The Plan of Management must be approved by the Director-General of the Department of Planning.

### I have rescued a native animal. What should I do?

If you rescue a native animal you should contact WIRES on 1300 094 737. If you rescue a native animal it is not an offence to have possession of the animal provided that you inform the Department of Environment, Climate Change and Water in writing within seven days.<sup>100</sup> You cannot keep the animal as a pet.

<sup>98</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127ZL.

<sup>99</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127ZK.

<sup>100</sup> *National Parks and Wildlife Act 1974* (NSW), s. 101(5)(c).



# Chapter 9:

## Trees

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Native vegetation is a significant management issue for coastal communities. In urban areas, trees are responsible for many neighbourhood disputes and in rural areas there are legal limits on land clearing. Native vegetation is important to the preservation of biodiversity and to the maintenance of rural landscapes. It is important that you are familiar with the laws that regulate when you can cut down trees on your property.

### Can I remove a tree in my area?

You should always check with your local council and/or Catchment Management Authority to see if you require approval to remove a tree. If you live in an urban area you should contact your local council to find out if a tree can be removed on your property and what approvals you may need. For example, you may need a development consent to remove a tree on your property. If you live in a rural area the *Native Vegetation Act 2003* (NSW) controls the removal of native vegetation and you should contact the Catchment Management Authority.<sup>101</sup>

### What are tree preservation orders?

Tree preservation orders are prepared by local councils. They make it an offence to cut down, ring bark, prune or remove particular trees, trees within a certain zone or trees in the local government area without the consent of council. The terms of a tree preservation order will vary between local government areas and some councils do not have one at all. Check with your local council to find out if a tree preservation order applies to your area. The relevant provisions may also be found in your local Development Control Plan.

### My neighbour's tree is causing damage to my property. What can I do?

If your adjoining neighbour has a tree on their property that is causing damage to your property or may cause injury to a person you may apply to the Land and Environment Court to order your neighbour to take action to prevent the damage or injury from occurring.<sup>102</sup>

The Land and Environment Court has special procedures for dealing with tree disputes under the *Trees (Disputes Between Neighbours) Act 2006* (NSW). The procedures are designed to encourage parties to represent themselves without the need for lawyers. The Court's website contains information and forms required to bring a tree dispute before it.<sup>103</sup> If your neighbour's tree is causing damage to your property you must first make a reasonable effort to reach an agreement with the owner of the tree. If you cannot reach an agreement then you must give 21 days' notice to your neighbour that you intend to apply to the Court for an order.<sup>104</sup>

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<sup>101</sup> The *Native Vegetation Act 2003* (NSW) does not apply to land zoned residential, village, township, industrial or business under a planning instrument.

<sup>102</sup> *Trees (Disputes Between Neighbours) Act 2006* (NSW), ss. 7, 10(3). The *Trees (Disputes Between Neighbours) Act 2006* only applies to land zoned residential (but not rural residential), village, township, industrial or business under a planning instrument.

<sup>103</sup> See the Land and Environment Court website at [http://www.lawlink.nsw.gov.au/lawlink/lec/ll\\_lec.nsf/pages/LEC\\_tree\\_disputes\\_information](http://www.lawlink.nsw.gov.au/lawlink/lec/ll_lec.nsf/pages/LEC_tree_disputes_information)

<sup>104</sup> *Trees (Disputes Between Neighbours) Act 2006* (NSW), s. 10.

The Court has the power to make a wide range of orders including ordering that the damage to your property be repaired, removal of the tree or compensation for damage.

### **My neighbour has applied to the Land and Environment Court to order me to remove a tree. What are my options?**

If your neighbour has applied to the Land and Environment Court for an order requiring you to remove a tree on your land you can either comply with their demands or defend the claim in Court. You can also negotiate with your neighbour and see if you can reach a compromise. If you do defend the dispute in Court you will have to argue that the tree is not the cause of the damage or posing a threat of injury. You could also make an argument for some alternatives to the removal of the tree, for example the installation of root barriers or the pruning of the tree. The Court's website contains more information on how to defend a claim.<sup>105</sup>

### **I suspect my neighbour of damaging a tree to enhance their view. What can I do?**

Tree vandalism for view enhancement is an increasing problem in coastal areas. It is illegal to remove trees without approval to enhance your view.<sup>106</sup> Many councils take the removal of trees to enhance views very seriously. A number of prosecutions have been carried out against residents who have vandalised trees. Some councils have also taken steps to continue the obstruction of the view by placing structures such as signs, shade cloth and shipping containers in place of the tree.

You should firstly report the incident to the council. You can also take proceedings yourself against your neighbour.<sup>107</sup>

### **How is native vegetation protected in non urban areas?**

The *Native Vegetation Act 2003* (NSW) regulates the clearing of native vegetation in non urban areas. If you want to remove or clear native vegetation you will need to obtain a Property Vegetation Plan from your local Catchment Management Authority. A Property Vegetation Plan is a clearing offsetting plan registered on the land title that sets out what areas of native vegetation can be cleared and what areas will be maintained and managed for conservation. Catchment Management Authorities may not approve some proposed clearing where the landholder cannot make a suitable offset or the proposal is to clear a threatened ecological community; highly cleared vegetation type; or in a highly cleared landscape.

There are a number of exceptions contained in the *Native Vegetation Act* allowing you to clear without an approval. It is best to contact the CMA to inquire if the clearing you propose will require approval.

There are heavy penalties for clearing native vegetation without an approval.

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<sup>105</sup> See Land and Environment Court website at [http://www.lawlink.nsw.gov.au/lawlink/lec/ll Lec.nsf/pages/LEC\\_tree\\_disputes\\_information](http://www.lawlink.nsw.gov.au/lawlink/lec/ll Lec.nsf/pages/LEC_tree_disputes_information)

<sup>106</sup> *Cameron v Eurobodalla Shire Council* (2006) NSWLEC 47.

<sup>107</sup> *Environmental Planning and Assessment Act 1979* (NSW) s. 123.

# Chapter 10:

## Bush Fires

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Bush fires can have devastating impacts on coastal communities and can pose a significant threat to human life. The following information will provide guidance on some of the key bush fire issues. However, you should also refer to the Rural Fire Service (RFS) website which has a range of information and publications relating to bush fires and bush fire hazard reduction.<sup>108</sup> The website also provides useful contact numbers for local RFS Offices.

### What do I have to do to prevent bush fires?

You should contact the Rural Fire Service (RFS) to learn about the best way to prepare your home for bush fires.<sup>109</sup>

Under the *Rural Fires Act 1997* (NSW) you are legally required to take practicable steps to prevent bush fires occurring on or spreading from your property, including any steps required by the Bush Fire Coordinating Committee.<sup>110</sup> The Rural Fire Service can offer advice and assistance on carrying out hazard reduction work.

You may need to obtain a Bush Fire Hazard Reduction Certificate before undertaking hazard reduction work on your land. Both the Commissioner of the RFS and the local council may issue a Bush Fire Hazard Reduction Certificate.

If a member of the public complains about a fire hazard on your property, the RFS can investigate and take action. The RFS can issue you with a Hazard Reduction Notice requiring you to do hazard reduction work on your property.<sup>111</sup>

You must either comply with the Notice by the specified compliance date, or you can lodge an objection, which must be received within seven days of the service of the Notice.

If you object, the Hazard Management Officer of the RFS must genuinely attempt to resolve your concerns in consultation with you.<sup>112</sup> However, that consultation must take into account any provisions of Bush Fire Risk Management Plans that apply to the land, environmental considerations and current legislation.

If you are still not satisfied you can appeal to the Commissioner of the RFS.<sup>113</sup>

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<sup>108</sup> [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

<sup>109</sup> Go to: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au) or call 1800 679 737.

<sup>110</sup> *Rural Fires Act 1997* (NSW), s. 63(2). It is the duty of the owner or occupier of land to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on or from, that land.

<sup>111</sup> Also called a Section 66 Notice, *Rural Fires Act 1997* (NSW), s. 66. There are limits on what you can be required to do. For example, the RFS cannot require you to remove trees that are reasonably necessary for a wind break or the protection of threatened species.

<sup>112</sup> *Rural Fires Act 1997* (NSW), s. 67. The RFS has 14 days to confirm, vary or withdraw the notice.

<sup>113</sup> *Rural Fires Act 1997* (NSW) s. 68. You have 7 days to lodge an appeal after the RFS's decision, or the end of the 14 days, whichever is the earlier.

## What is the Bush Fire Coordinating Committee?

The Bush Fire Coordinating Committee (BFCC) is made up of government and non-government organisations. The BFCC aims to develop policies and procedures to ensure a coordinated approach to major bush fire management issues. The main tasks of the BFCC include:

- Planning for bush fire prevention;
- Coordinating bush fire fighting; and
- Advising the Commissioner of the RFS on bush fire prevention, mitigation and suppression.

District Bush Fire Management Committees prepare plans of operation and Bush Fire Risk Management Plans.

## What are Bush Fire Risk Management Plans?

Bush Fire Risk Management Plans are prepared by Bush Fire Management Committees in various parts of the State. The public must be notified and given the opportunity to make submissions on draft Bush Fire Risk Management Plans.<sup>114</sup>

A Bush Fire Risk Management Plan can set out steps to be taken to reduce fire hazards, such as keeping areas of land cleared and conducting controlled hazard reduction burning. If a Bush Fire Risk Management Plan has been adopted for your area you can get a copy from your local council or RFS office.

## What powers does the Rural Fire Service have during bush fire suppression operations?

When fighting a bush fire, the RFS has various powers to do things on private property. For example, the RFS can pull down or cut fences, pull down buildings or structures, remove vegetation, establish fire breaks and use water from your property without compensation.<sup>115</sup> Any damage to your property caused by the RFS, in good faith, in the course of fighting a fire, is taken to be 'damage caused by a fire' for the purposes of your fire insurance policy.<sup>116</sup>

## I am worried about fire hazards in my community. Who do I tell?

Complaints in relation to fire hazards should be made to the RFS. You can make a complaint to a Fire Control Centre<sup>117</sup> or fill out the online Bush Fire Hazard complaint form on the RFS website.<sup>118</sup> Your details will be kept confidential. For a fire emergency call 000.

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<sup>114</sup> *Rural Fires Act 1997* (NSW), s. 57.

<sup>115</sup> *Rural Fires Act 1997* (NSW), ss. 25, 26.

<sup>116</sup> *Rural Fires Act 1997* (NSW), s. 28.

<sup>117</sup> To find your local Fire Control Centre go to: [http://www.rfs.nsw.gov.au/dsp\\_content.cfm?cat\\_id=577](http://www.rfs.nsw.gov.au/dsp_content.cfm?cat_id=577) or call 1800 679 737.

<sup>118</sup> Available at: [http://www.bushfire.nsw.gov.au/dsp\\_content.cfm?cat\\_id=1032](http://www.bushfire.nsw.gov.au/dsp_content.cfm?cat_id=1032)

## **I am worried about fire hazards on my own land. What can I do?**

Landholders concerned about bush fire hazards on their property can simply approach their local Rural Fire Service (RFS) Office and apply for a free Bush Fire Hazard Reduction Certificate (i.e. an environmental approval). An RFS Officer will then visit and assess the landholder's property and provide the landholder with advice on bush fire protection measures ranging from the clearing of vegetation to methods of improving the resilience of their home to ember attack. If a Bush Fire Hazard Reduction Certificate is issued then no further environmental approval is required from any other NSW authority or local council.

## **What do I need to do if I want to undertake burning on my property?**

You should first visit the RFS website and look at the RFS document 'Before You Light That Fire' for an overview of the legal requirements. In all cases you should contact your local RFS Office for advice before proceeding with your plans to burn. You should also contact your local council.

## **How can I find out about hazard reduction burns in my community?**

The RFS lists upcoming hazard reduction burns on its website.<sup>119</sup>

## **How can I tell if my land is zoned as bush fire prone?**

Bush fire prone land is land zoned in the LEP as bush fire prone land. Bush fire prone land maps can be viewed at your local council. If your land is zoned within a bush fire prone area it will be listed on the s. 149 certificate for your property. If you refer to your s. 149 certificate it is important that you are referring to the most up to date copy as bush fire prone land zones may have changed recently.

## **Are there special requirements I must comply with when building on bush fire prone land?**

If you want to build a new home or building or do external renovations or additions to an existing building on bush fire prone land you must make sure the planned work complies with the requirements set out in *Planning for Bush Fire Protection*<sup>120</sup> and the requirements contained in Australian Standard AS3959-1999.<sup>121</sup> Measures include enclosed eaves, all exposed pipes to be made of metal and all opening windows to be screened with metal screens. You should contact your local council for advice on how to make sure your building proposal will meet the bush fire protection requirements.

## **Are there special requirements when subdividing bush fire prone land?**

If you want to subdivide bush fire prone land to create two or more lots you will need to get an approval from the Commissioner of the RFS called a Bush Fire Safety Authority, in addition to a development consent.<sup>122</sup> Your local council will arrange for your application to be assessed by the RFS.

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<sup>119</sup> Available at: [http://www.rfs.nsw.gov.au/dsp\\_content.cfm?cat\\_id=689](http://www.rfs.nsw.gov.au/dsp_content.cfm?cat_id=689)

<sup>120</sup> Available at: [http://www.rfs.nsw.gov.au/dsp\\_content.cfm?cat\\_id=900](http://www.rfs.nsw.gov.au/dsp_content.cfm?cat_id=900)

<sup>121</sup> A summary of Australian Standard AS3959-1999 is available from the Rural Fire Service at [http://www.rfs.nsw.gov.au/file\\_system/attachments/State08/Attachment\\_20071220\\_F5C26EE1.pdf](http://www.rfs.nsw.gov.au/file_system/attachments/State08/Attachment_20071220_F5C26EE1.pdf)

<sup>122</sup> *Rural Fires Act 1997* (NSW), s. 100B and *Rural Fires Regulation 2008* (NSW), cl. 45.

# Chapter 11:

## Pollution

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Pollution is often the result of human habitation and industry. In coastal areas pollution can have serious adverse impacts on fragile ecosystems and human health. It is important to ensure that pollution is controlled so that our coastal areas remain attractive places to live and visit and our impact on the environment is minimised.

### Who regulates pollution in NSW?

Pollution is regulated in NSW by the Department of Environment, Climate Change and Water (DECCW). Pollution laws<sup>123</sup> are also enforced by local councils and sometimes the NSW Police Force. Many activities require a licence to pollute called an environment protection licence.

When determining what licence or approval an activity needs you must first identify the appropriate regulatory authority. The appropriate regulatory authority will depend on what type of activity is being carried out, the size of the activity and where the activity is being carried out. The appropriate regulatory authority may be DECCW, your local council or another government agency.

DECCW issues environment protection licences to authorise certain activities that cause pollution. The criteria for determining whether the activity or premises require an environment protection licence generally relate to the type of activity and size or intensity of the activity or the sensitivity of the surrounding environment.

Local councils are responsible for regulating pollution from all premises that do not hold an environment protection licence. These are generally smaller scale industrial activities.

### What is an environment protection licence?

An environment protection licence authorises pollution to levels set by the licence. The *Protection of the Environment Operations Act 1997* (NSW) sets out a list of 'scheduled activities'.<sup>124</sup> It is illegal for a scheduled activity to occur without an environment protection licence.<sup>125</sup> A public register is available on the internet listing all environment protection licences.<sup>126</sup> DECCW has also published a comprehensive guide to help people determine if they need an environment protection licence, and if so, how to apply for one.<sup>127</sup>

DECCW must publish the details of each licence application it receives on its public register.<sup>128</sup> You can make a submission about an environment protection licence and DECCW must

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<sup>123</sup> The main law in NSW regulating water, air and noise pollution is the *Protection of the Environment Operations Act 1997* (NSW).

<sup>124</sup> *Protection of the Environment Operations Act 1997* (NSW), Schedule 1.

<sup>125</sup> *Protection of the Environment Operations Act 1997* (NSW), ss. 47, 48, 49.

<sup>126</sup> <http://www.environment.nsw.gov.au/prpoeo/index.htm>

<sup>127</sup> <http://www.environment.nsw.gov.au/licensing/>

<sup>128</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 308(2)(a).

consider public submissions in deciding whether to grant a licence, including any public submissions made under the development assessment process.<sup>129</sup>

Any person can write to DECCW and request a statement of reasons explaining why DECCW granted or refused an environment protection licence application (including applications for transfers or variations).<sup>130</sup> The reasons must set out the environmental and other considerations that the decision maker took into account and the standards or requirements that the decision maker considered applicable.<sup>131</sup>

## 11.1 Water pollution

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There is a general ban on polluting water without a licence.<sup>132</sup> This ban includes both surface and ground water:

The definition of water pollution is very broad. Any matter placed in water could be a pollutant depending on the effect the matter has on the water. Water pollution is defined as 'the introduction of any solid matter, liquid or gas into water that changes the physical, chemical or biological condition of the water'.<sup>133</sup>

It is also an offence to place matter where it is likely to get into the water and cause pollution, such as a drain or gutter or dry river bed, even if the matter does not actually reach the water.<sup>134</sup>

Polluting water without a licence is a criminal offence.<sup>135</sup>

### Cattai Wetlands

The Cattai Wetlands (located in the Greater Taree Local Government Area) were under major threat from pollution caused by acid sulfate soils. The area had previously been drained for agricultural production. A rescue plan was adopted and implemented by Greater Taree City Council in conjunction with local community groups and commercial fisheries. A remediation plan for the wetlands was developed. The wetlands were re-vegetated and noxious weeds were cleared. The native vegetation accelerated sedimentation of artificial drainage lines. This allowed sea water to return to the wetland and neutralise the acid sulfate in the soil. Ongoing bush regeneration works are carried out by Conservation Volunteer Teams to maintain the health of the wetlands.

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<sup>129</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 45(1).

<sup>130</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 61.

<sup>131</sup> *Protection of the Environment Operations (General) Regulation 1998* (NSW), cl. 46(1).

<sup>132</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 120.

<sup>133</sup> *Protection of the Environment Operations Act 1997* (NSW), Dictionary.

<sup>134</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 120. See also *Newcastle City Council v Pace Farm Egg Products Pty Ltd* (No.2) (2005) NSWLEC 241.

<sup>135</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 120.

## 11.2 Air pollution

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Air pollution is the emission into the air of any impurity, including dust, smoke, cinders, solid particles, gases, fumes, odours or radioactive substances.<sup>136</sup> Pollution laws establish specific standards above which listed pollutants must not be emitted.<sup>137</sup> It is an offence to carry out an activity which causes the emission of air pollution in excess of these standards.

An offensive odour is an odour that is likely to be harmful to another person or interfere with the comfort of a person on another property.<sup>138</sup> The law regulates offensive odours from 'scheduled activities'.<sup>139</sup>

### Is a licence needed to light fires on my property?

The burning of vegetation and domestic waste is generally prohibited in most local government areas without approval from council or DECCW.<sup>140</sup> Contact your local council to discover the restrictions on lighting fires and burning garden waste or rubbish. Most councils ban this activity and can issue penalty notices.

### What should I do about smokey vehicles?

A motor vehicle must not emit exhaust (i.e. excessive air impurities which are in excess of a certain standard of concentration) which is visible for a continuous period of more than 10 seconds.<sup>141</sup> On the first occasion the owner of the motor vehicle may be issued a warning letter and an order to have the car repaired. If the owner fails to comply with the terms set out in the warning letter they may be charged with a more serious offence.<sup>142</sup>

## 11.3 Dumping waste

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Dumping waste or littering on public land or open private land is an offence.<sup>143</sup> Litter is defined as any solid or liquid domestic or commercial refuse, debris or rubbish. Litter includes, metal, cigarette butts, abandoned vehicles, construction or demolition material, garden clippings, soil, sand or rocks.<sup>144</sup>

It is also an offence to litter from a motor vehicle or trailer.<sup>145</sup>

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136 *Protection of the Environment Operations Act 1997* (NSW), Dictionary.

137 *Protection of the Environment Operations (Clean Air) Regulations 2002* (NSW), cl. 27, 28, 33 and Schedules 2, 3, 4, 6.

138 *Protection of the Environment Operations Act 1997* (NSW), Dictionary.

139 A 'scheduled activity' is one listed under the *Protection of the Environment Operations Act 1997* (NSW), Schedule 1.

140 Schedule 8 of the *Protection of the Environment Operations (Clean Air) Regulation 2002* lists the local government areas in which burning is prohibited without approval.

141 *Protection of the Environment Operations Act 1997* (NSW), s. 154(2) defines "emits excessive air impurities", and see *Protection of the Environment Operations (Clean Air) Regulations 2002* (NSW), cl. 8 and 9.

142 *Protection of the Environment Operations (Clean Air) Regulation 2002* (NSW), cl. 9.

143 *Protection of the Environment Operations Act 1997* (NSW), ss. 115, 143, 145.

144 *Protection of the Environment Operations Act 1997* (NSW), s. 144A. Dumping waste may also be considered land pollution, see *Protection of the Environment Operations Act 1997* (NSW), ss. 142A – 142E.

145 *Protection of the Environment Operations Act 1997* (NSW), s. 146(1).



## 11.4 Noise pollution

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There is no general prohibition on causing noise on a property.

If there is offensive noise, a police officer, council officer or DECCW officer may issue a noise abatement direction, which is a temporary direction requiring the noise to be controlled.<sup>146</sup>

The council may issue a noise control notice to place ongoing restrictions on the noise.<sup>147</sup>

An offensive noise is a noise that is likely to interfere with the comfort of a person on another property.<sup>148</sup>

A person who is affected by ongoing offensive noise<sup>149</sup> within their own house (or while occupying other premises) can apply to the Local Court for an order that the offensive noise stop (a noise abatement order).<sup>150</sup>

## 11.5 Reporting pollution

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### What do I do if I suspect someone of causing pollution?

If you are concerned about a pollution incident, you should first contact the individual or company causing the pollution and request an explanation and ask that they fix the problem. You should also report the pollution incident to the DECCW *Environment Hotline* on 131 555.

Different organisations are responsible for regulating different types of pollution and also different types of activities. DECCW has a list of contacts and a guide to who you should make a pollution complaint to.<sup>151</sup>

The EDO has developed a user friendly webpage called the Compliance Portal<sup>152</sup> that helps you discover if an activity that you suspect is causing pollution requires an environment protection licence and whether such a licence has been issued.

### What are some tips for reporting pollution incidents?

Keep notes of your discussion and record the name of the person who takes your call. DECCW can choose to investigate your complaint or may refer you to another organisation responsible for regulating the pollution.

If the responsible authority does not resolve the problem to your satisfaction, you should:

- Obtain a copy of the development consent for the premises from your local council and check whether the conditions of consent include pollution control.

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<sup>146</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 268.

<sup>147</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 264.

<sup>148</sup> *Protection of the Environment Operations Act 1997* (NSW), Dictionary.

<sup>149</sup> The Dictionary in the *Protection of the Environment Operations Act 1997* (NSW) defines 'offensive noise' as noise which is harmful to a person who is outside the premises, or which interferes unreasonably with the comfort or repose of a person outside the premises.

<sup>150</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 268.

<sup>151</sup> [www.environment.nsw.gov.au/pollution/](http://www.environment.nsw.gov.au/pollution/)

<sup>152</sup> [www.edo.org.au/edonsw/compliance](http://www.edo.org.au/edonsw/compliance)

- If the activity is a 'scheduled activity', obtain a copy of the environment protection licence for the premises from the DECCW's public register<sup>153</sup> and check whether the licence authorises the pollution.
- Obtain copies of any monitoring reports which the polluter may have submitted to DECCW (again, from the public register on the Internet) and compare them with the pollution levels permitted under the environment protection licence.

Contact the environment groups who are interested in preventing pollution, such as the Total Environment Centre in Sydney.

Contact the Environmental Defender's Office free *Environmental Law Advice Line* on (02) 9262 6989 or 1800 626 239 (Sydney) 1300 369 791 (Northern Rivers) and obtain some legal advice about your options.

## **What if there is a new development proposed in my community that will cause pollution?**

If there is a development proposal that will cause pollution and will require an environment protection licence then the council must send DECCW the development application and DECCW must advise their general terms of approval.<sup>154</sup> If DECCW indicates that it will not approve the development and will not issue an environment protection licence then the council must refuse the development application.

If the development is a major project under Part 3A<sup>155</sup> and has been approved by the Minister for Planning then DECCW must issue an environment protection licence consistent with that approval.<sup>156</sup>

# **Chapter 12:**

## **Heritage**

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Heritage items, places and buildings are important features of many coastal communities. There are many laws that seek to protect heritage, natural heritage and Aboriginal cultural heritage. All levels of government have a responsibility for ensuring Australia's heritage is protected.

### **Local government heritage protection**

The majority of heritage protection in NSW is carried out by local councils. All local councils are required to identify items of local heritage significance in a heritage schedule to the Local

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<sup>153</sup> <http://www.environment.nsw.gov.au/prpoeo/>

<sup>154</sup> This is called integrated development; *Environmental Planning and Assessment Act 1979* (NSW), s. 91 and *Protection of the Environment Operations Act 1997* (NSW), s. 51.

<sup>155</sup> See Chapter 4 for further information on major projects and Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW).

<sup>156</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 75V.

Environmental Plan.<sup>157</sup> There is also a clause in the Standard Instrument LEP that all councils must adopt that deals with heritage conservation.<sup>158</sup>

The Minister for Planning can authorise a council to make an interim heritage order for items of local heritage significance in the council area. An interim heritage order will lapse after 6 months (but can be extended by council resolution), during which time the local council must decide whether to place the item on the heritage schedule of its LEP or have the item listed on the State Heritage Register:

## State heritage protection

Natural, cultural and built heritage is protected in NSW by listing the item or place on the State Heritage Register. Such listing means that a person cannot damage, destroy, alter or move the item, building or land without approval from the Heritage Council. There are three types of State heritage protection available:

- **Listing on the State Heritage Register**

The State Heritage Register provides permanent protection for a heritage item;<sup>159</sup>

- **Interim heritage orders**

An interim heritage order is a temporary form of protection over an item or land that can be used while further investigation of the heritage value of the item is carried out. An interim heritage order can be made by the Minister for Planning. The majority of interim heritage orders are made in response to community representations or concerns raised by local councils;<sup>160</sup> and

- **Emergency orders**

The Minister for Planning or the Chairperson of the Heritage Council can make an emergency order to stop work on a site if a heritage building, work, relic or place is being harmed or is about to be harmed. These orders can only be used where the item or land is not already covered by an interim heritage order or listed on the State Heritage Register. They cannot be made over Part 3A major project developments. Emergency orders last for 40 days. Within that time, the Heritage Council must assess the heritage value of the item or place and give advice to the Minister for Planning as to whether an interim heritage order should be made.<sup>161</sup>

## What is the Heritage Council of NSW?

The Heritage Council is an advisory body whose members are appointed by the Minister for Planning and includes representatives from the community, DECCW, the conservation profession and the National Trust of Australia (NSW).

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<sup>157</sup> See Chapter 1 for more information on Local Environmental Plans.

<sup>158</sup> *Standard Instrument – Principal Local Environmental Plan, Schedule 5 – Environmental Heritage.*

<sup>159</sup> *Heritage Act 1977 (NSW), Part 3A.*

<sup>160</sup> *Heritage Act 1977 (NSW), Part 3.*

<sup>161</sup> *Heritage Act 1977 (NSW), 79C.*

## Federal heritage protection

Heritage is protected at a Federal level under the *Environment Protection and Biodiversity Conservation Act 1999*. There are a number of ways heritage can be protected at the Federal Level.

- **World Heritage Area**

World heritage areas must be nominated by the Australian Government as world heritage areas before they can be listed. Once an area is listed, the Federal Environment Minister must assess and approve any action that is likely to have a significant impact on it.<sup>162</sup>

- **National Heritage List**

The National Heritage List includes natural, historic and Indigenous places of outstanding heritage value. You can nominate a place for inclusion on this list if it satisfies at least one of the National Heritage criteria.<sup>163</sup> The Federal Environment Minister decides if a place will be listed. If a place is listed a management plan may be prepared and the Federal Environment Minister must assess and approve any action that is likely to have a significant impact on it.

- **Commonwealth Heritage List**

This list comprises natural, Indigenous and historic heritage places on Commonwealth lands and waters. The same process is followed as for listing on the National Heritage List. If a place is listed a management plan may be prepared and the Federal Environment Minister must assess and approve any action that is likely to have a significant impact on it.

## Chapter 13: Aboriginal cultural heritage

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Aboriginal cultural heritage is protected under both NSW and Federal laws.

### Federal protection

Aboriginal cultural heritage can be given national protection in a number of ways. An area may be listed as a World Heritage Area, as National Heritage, listed under the Commonwealth Heritage List, the National Estate Register; protected under the Federal Indigenous Heritage Protection law<sup>164</sup> or listed under Native Title. The Federal Minister for Aboriginal Affairs can make a protective declaration over areas that contain Indigenous objects and remains that are being injured or desecrated.<sup>165</sup>

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<sup>162</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 12.

<sup>163</sup> The criteria for the National Heritage List and the nomination form can be found at <http://www.environment.gov.au/heritage/nominating/index.html>

<sup>164</sup> *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

<sup>165</sup> *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), ss. 9(1), 12(3) and 12(4).

## State protection

The primary law in NSW that protects Aboriginal cultural heritage is the *National Parks and Wildlife Act 1974* (NSW). The Department of Environment, Climate Change and Water (DECCW) is responsible for protecting Aboriginal cultural heritage in NSW. Under NSW law, 'Aboriginal objects' are deposits, objects or material evidence, including Aboriginal remains, relating to Aboriginal habitation of New South Wales.<sup>166</sup> These legally belong to the Government.<sup>167</sup> An 'Aboriginal place' under NSW law is a place which is or was of special significance for Aboriginal people, and the Minister for Environment has also recognised and declared to be 'significant'.<sup>168</sup> Aboriginal cultural heritage is protected in the following ways in NSW:

- Land can be dedicated as an Aboriginal Area to preserve, protect and prevent damage to Aboriginal objects or Aboriginal places on that land.<sup>169</sup>
- Subject to other legislation, a Stop Work Order can be issued for up to 40 days if a current or future action is likely to significantly affect an Aboriginal object or Aboriginal place.<sup>170</sup>
- An Interim Protection Order can be made to preserve land with Aboriginal places or objects on it, for a period no longer than 2 years.<sup>171</sup>
- A Conservation Agreement can be entered into with landowners to protect areas which contain objects or Aboriginal places of special significance.<sup>172</sup>
- Destroying or damaging items or places of Aboriginal heritage value without an approval is a criminal offence.<sup>173</sup>

Natural and cultural heritage can also be protected via the State Heritage Register.<sup>174</sup> This list may include cultural heritage items or places.

## Local government protection

All local councils must provide for the conservation and management of Aboriginal heritage when making Local Environmental Plans unless they can justify why they should not.<sup>175</sup>

## Who can destroy cultural heritage?

Anyone can destroy cultural heritage if they have approval from the relevant government department. There is no guarantee that protected cultural heritage will not be damaged or

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<sup>166</sup> *National Parks and Wildlife Act 1974* (NSW), s. 5.

<sup>167</sup> *National Parks and Wildlife Act 1974* (NSW), s. 83. There are policies that encourage repatriation of Aboriginal ancestral remains back to Aboriginal communities when they can be identified either by documentation or other scientific means.

<sup>168</sup> *National Parks and Wildlife Act 1974* (NSW), s. 84.

<sup>169</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 30K and 62.

<sup>170</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 91AA and 91DD (3) - (5).

<sup>171</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 91A and 91D(1).

<sup>172</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69C(1)(d).

<sup>173</sup> *National Parks and Wildlife Act 1974* (NSW), s. 86.

<sup>174</sup> *Heritage Act 1977* (NSW), Part 3A.

<sup>175</sup> Direction 2.3 under the powers conferred by s 117 of the *Environmental Planning and Assessment Act 1979*. *Environmental Planning and Assessment Act 1979*, s. 55(2)(c).

destroyed. For example, the Director-General of the National Parks and Wildlife Service can give permission for the destruction of cultural heritage.<sup>176</sup>

### **What if cultural heritage is damaged without approval?**

It is an offence to:<sup>177</sup>

- Disturb or excavate land in order to discover an Aboriginal object;
- Disturb or move an Aboriginal object belonging to the Crown;
- Take or remove an Aboriginal object from a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area; or
- Intentionally damage an Aboriginal object or Aboriginal place.

## **Chapter 14: Marine parks**

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Marine parks preserve the biodiversity of marine environments and provide for the sustainable use of resources by the community. Marine parks are divided into three zones; general use zones, habitat protection zones and sanctuary zones.

### **Can I go fishing in a marine park?**

Each marine park has different restrictions on the activities you can do in the marine park. Usually fishing is prohibited in the sanctuary zone of the marine park. To find out what activities you can and cannot do in a marine park go to the Marine Parks Authority website or contact your local Marine Park Office.<sup>178</sup>

### **What about fishing generally?**

You must get a licence for recreational fishing in NSW. There are many restrictions on the size, species and numbers of fish you can catch. There are also restrictions of the methods you can use to catch fish and invertebrates. To find out about the laws that may apply to your fishing activities go to the Fisheries website.<sup>179</sup>

The Department of Industry and Investment – Primary Industries also produces the NSW Recreational Saltwater Fishing Guide each year. The guide is available on the DPI website<sup>180</sup> and from DPI offices.

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<sup>176</sup> *National Parks and Wildlife Act 1974* (NSW), s. 90.

<sup>177</sup> *National Parks and Wildlife Act 1974* (NSW), s. 86.

<sup>178</sup> <http://www.mpa.nsw.gov.au>

<sup>179</sup> <http://www.dpi.nsw.gov.au/fisheries/recreational>

<sup>180</sup> <http://www.dpi.nsw.gov.au/fisheries/recreational/info/guide>

# Chapter 15:

## Ramsar Wetlands

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Coastal wetlands provide critical habitat for many threatened native and migratory species. They also provide essential ecosystem services by filtering and cleaning water and helping to prevent floods. Wetlands are recognised globally as important ecosystems. In 1971 Australia entered into an international agreement to protect important wetlands. The agreement is known as the Convention on Wetlands of International Importance or the 'Ramsar Convention'. Wetlands that are protected under the Ramsar Convention are commonly known as Ramsar Wetlands.

### How are Ramsar Wetlands protected in Australia?

The Ramsar Convention is primarily implemented in Australia through the listing of Ramsar Wetlands as a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). If an activity will or is likely to have a significant impact on a Ramsar Wetland the activity will require approval from the Federal Minister for Environment.<sup>181</sup> Additionally, the EPBC Act makes it a criminal offence to cause an action that will or is likely to have a significant impact on the ecological character of a Ramsar Wetland without approval.<sup>182</sup>

### What are the Ramsar Wetlands in the NSW Coastal Zone?

#### *Myall Lakes*

The Myall Lakes were listed as a Ramsar site in 1999. Myall Lakes are considered a representative wetland because they are extensive, are in near-natural condition, and are a good example of the barrier lagoon systems found on the NSW North Coast. They also play an important role in the functioning of one of NSW's most important remaining brackish systems. The lakes are home to 430 recorded species of fauna, including 289 bird species. The lake system also provides a permanent water source, and serves as an important drought refuge for fauna.

#### *Hunter Estuary Wetlands*

The Hunter Estuary Wetlands are made up of the Kooragang Nature Reserve and the Shortland Wetland (also known as the Hunter Wetlands Centre). The Kooragang Nature Reserve is part of the estuarine section of the Hunter River close to large industrial sites. The Kooragang Nature Reserve is widely recognised for its conservation of migratory birds, including shorebirds and provides critical habitat during periods of inland drought. The Shortland Wetland is a small collection of wetland types adjacent to urban development that have recently been rehabilitated. The Shortland Wetland is the only wetland found within the Sydney Basin biogeographic region that has a combination of high conservation value near-natural wetlands and high conservation value artificial wetlands. The wetlands are important as both a feeding ground and roosting site for seasonal shorebirds and transient migratory birds.

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<sup>181</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 16.

<sup>182</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 17B. Ramsar Wetlands are also protected under *State Environmental Planning Policy 14 – Coastal Wetlands*.



## PART FOUR: *Climate Change and the Coast*

The Intergovernmental Panel on Climate Change (IPCC) defines climate change as any change in climate over time, whether due to natural variability or as a result of human activity.<sup>183</sup> This is the definition chosen for this booklet. The IPCC definition differs from that in the United Nations Framework Convention on Climate Change, where climate change refers to a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods.

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<sup>183</sup> Intergovernmental Panel on Climate Change Fourth Assessment Report 2007. Glossary of Synthesis Report available at: [www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr\\_appendix.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_appendix.pdf)



## What are the effects of climate change on coastal communities?

Coastal communities and the coastal environment are particularly vulnerable to the effects of climate change due to their proximity to the coastline. Climate change is expected to cause rising sea levels and this is expected to increase coastal hazards such as a coastal erosion, more extreme storm events and coastal inundation.<sup>184</sup>

## What is the NSW Sea Level Rise Policy Statement?

The NSW Government has released a Policy Statement on sea level rise. The policy states that over the period from 1870 - 2001 global sea levels rose by 20cm and sets sea level rise planning benchmarks of 40cm by 2050 and 90cm by 2100. Sea levels could rise higher than these projections.

## What will be the effects of sea level rise on the NSW coastline?

Sea level rise affects the high and low tide levels and the natural processes responsible for shaping the coastline.<sup>185</sup> It is acknowledged that the effects will include:

1. Increased or permanent tidal inundation of land by sea water;
2. Recession of the beach and dune systems, and to a lesser extent cliffs and bluffs;
3. Changes in the way tides behave in estuaries;
4. Salt water intrusion into fresh water estuaries;
5. Higher salt water tables; and
6. Increased severity of flooding in storm events, due to inability of low lying areas to drain water.<sup>186</sup>

## How do decision makers consider the effects of climate change?

Some of the laws and policies that require decision makers to consider climate change include:

1. *State Environmental Planning Policy 71 – Coastal Protection* - requires consideration of the likely impact of interactions between coastal processes, hazards and development.<sup>187</sup>
2. *The Standard Instrument – Principal Local Environmental Plan* - clause 5.5 requires decision makers to consider, for all development within the Coastal Zone, the effect on the proposed development of coastal processes, coastal hazards and sea level rise and the impact the development will have on coastal processes, coastal hazards and sea level rise.
3. A Ministerial Direction that all planning proposals<sup>188</sup> must be consistent with the NSW Coastal Policy, the Coastal Design Guidelines for NSW and the Coastline Management Manual unless a departure can be justified.<sup>189</sup>

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<sup>184</sup> For more information see the Department of Environment, Climate Change and Water, *NSW Sea Level Rise Policy Statement*, October 2009. Available at: [www.environment.nsw.gov.au/resources/climatechange/09708sealevrisepolicy.pdf](http://www.environment.nsw.gov.au/resources/climatechange/09708sealevrisepolicy.pdf)

<sup>185</sup> For more information see the Department of Environment, Climate Change and Water, *NSW Sea Level Rise Policy Statement*, October 2009. Available at: [www.environment.nsw.gov.au/resources/climatechange/09708sealevrisepolicy.pdf](http://www.environment.nsw.gov.au/resources/climatechange/09708sealevrisepolicy.pdf)

<sup>186</sup> NSW Sea Level Rise Policy Statement, see above.

<sup>187</sup> *State Environmental Planning Policy 71 – Coastal Protection*, cl. 8(j).

<sup>188</sup> A planning proposal was previously known as a Draft Local Environmental Plan.

<sup>189</sup> Ministerial Direction 2.2 – Coastal Protection, made pursuant to s. 117(2) of the *Environmental Planning and Assessment Act 1979* (NSW).

4. A Ministerial Direction that all planning proposals must be consistent with the Flood Prone Land Policy and the Flood Plan Development Manual that require decision makers to consider the effects of climate change.<sup>190</sup>
5. A requirement to consider the principles of Ecologically Sustainable Development.<sup>191</sup>

## How is the NSW Government planning for sea level rise?

In August 2010, the NSW Department of Planning released the *NSW Coastal Planning Guideline – Adapting to sea level rise*. The guideline introduces planning hazard lines incorporating the sea level rise benchmarks of the *NSW Sea Level Rise Policy*. Councils are required to identify and make plans for coastal risk areas. Coastal risk areas are areas of land likely to be affected by rising sea levels. Lands within the identified coastal risk areas may become subject to restrictions on development and land use. The EDO will produce an online factsheet to complement this booklet. The publication of the fact sheet will be announced in our weekly eBulletin.<sup>192</sup>

## What may be the effects of climate change on coastal properties and home insurance?

Some damage caused to property by climate change may not be covered under standard home and contents insurance policies. Risks that are generally not covered by insurance or are presently difficult to insure against include storm surges, landslip, coastal erosion and sea level rise.<sup>193</sup> These are often referred to as salt water risks. Check your insurance policy and talk to your insurer to discover if your home is covered for damage caused by salt water risks.

## Can landowners protect properties at risk of damage due to coastal hazards?

In late 2009 the Department of Environment, Climate Change and Water announced a plan to introduce a law allowing landowners to apply to carry out works to protect their homes from rising sea levels and coastal erosion. These works can only be approved where they will not cause adverse impacts on coastal processes or on the public amenity of the beach or on the environment. These reforms have not yet been introduced.<sup>194</sup> The introduction of the reforms will be announced in the EDO weekly eBulletin.

## What are the proposed changes to coastal zone management?

The NSW Government is proposing major legal reforms that may allow landowners to undertake erosion protection works. At the time of writing the *Coastal Protection and Other*

<sup>190</sup> Ministerial Direction 4.3 – Flood Prone Land, made pursuant to s. 117(2) of the *Environmental Planning and Assessment Act 1979* (NSW).

<sup>191</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 79C(1)(e) requires that a consent authority take the 'public interest' into account. See *Telstra Corporation Ltd v Hornsby Shire Council* (2006) 146 LGERA 10 in which the Court held that ESD must be considered as part of the public interest. Subsequent cases have established that climate change is relevant to ESD. See *Minister for Planning v Walker* (2008) NSWCA 224 and *Aldous v Greater Taree City Council* (2009) NSWLEC 17. For more information on the principles of Ecologically Sustainable Development see Chapter 5.

<sup>192</sup> To Subscribe to our weekly eBulletin send an email to [education@edo.org.au](mailto:education@edo.org.au) or call 02 9262 6989.

<sup>193</sup> Insurance Council of Australia submission to *House of Representatives Standing Committee Inquiry on Climate Change and Environmental Impacts on Coastal Communities*, Submission p. 12.

<sup>194</sup> [www.environment.nsw.gov.au/coasts/coastalerosionmgmt.htm](http://www.environment.nsw.gov.au/coasts/coastalerosionmgmt.htm)

*Legislation Amendment Bill 2010* has not been put to vote in the NSW Parliament. The key changes proposed in the Bill are as follows:

- **Emergency coastal protection works**  
Landholders whose homes are at risk from coastal erosion and are located in coastal erosion hotspots<sup>195</sup> will be able to use sand bags or sand to protect their homes from erosion for up to six months.
- **Long Term Coastal Protection Works**  
Landowners can build long term coastal protection works<sup>196</sup> where satisfactory arrangements have been made for the restoration of the beach or adjacent land and the maintenance of those works. Landowners will need to gain a development approval prior to building long term coastal protection works.
- **The NSW Coastal Panel**  
The Bill proposes the establishment of a new body called the NSW Coastal Panel. The NSW Coastal Panel will be made up of seven members and will be responsible for commenting on coastal zone management plans and approving long term coastal protection works where a council does not have a coastal zone management plan in place.
- **Strengthening of the good faith defense**  
The Bill proposes to further protect councils from potential liability for actions or failures to act in relation to coastal erosion, failure to upgrade flood or coastal protection works to accommodate climate change or for issuing an order to remove illegal structures.

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<sup>195</sup> The Coastal Erosion Hotspots are listed in the Draft Minister's Requirements under the Coastal Protection Act 1979 (NSW) available at: [www.environment.nsw.gov.au/resources/water/coasts/10706minrqcoastalprotect.pdf](http://www.environment.nsw.gov.au/resources/water/coasts/10706minrqcoastalprotect.pdf)

<sup>196</sup> Long term structures include things such as sea walls

A black and white photograph of coastal vegetation, likely beach grasses, with a dark rectangular text box overlaid in the center. The text box contains the title 'PART FIVE: Protecting the Coast' in white. The background shows a field of tall, thin grasses with seed heads, extending towards a flat horizon under a clear sky.

## PART FIVE: *Protecting the Coast*

A great way to protect the coast and the environment is to limit your own impact on the environment. The environmental organisations listed in the Contacts section of this booklet may have tips and advice for limiting your impact on the environment.

# Chapter 16:

## Getting involved

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One of the best ways the community can protect the coast is by being involved in the planning system. One of the stated objectives of the *Environmental Planning and Assessment Act 1979* (NSW) is 'to provide increased opportunity for public involvement and participation in environmental planning and assessment'.<sup>197</sup> The following information is designed to assist community members to participate more effectively in coastal decision making.

### How are Local Environmental Plans made and how can I be involved?

Draft LEPs and amendments to LEPs (also known as planning proposals) are usually prepared by local councils. To become an LEP, the planning proposal must go through the gateway process. Only relevant planning authorities can sponsor a planning proposal through the gateway process.<sup>198</sup> However, an individual or organisation could prepare a planning proposal, usually an amendment to an LEP, and seek support from a relevant planning authority to sponsor it through the gateway process.

#### EDO weekly e-bulletin

The EDO produces a free weekly e-bulletin that contains information about new major project applications, planning proposals and EPBC Act referrals that are open for public comment. To subscribe to the bulletin email [education@edo.org.au](mailto:education@edo.org.au) or call 02 9262 6989

The gateway process involves the Minister for Planning or a delegate (referred to as the gateway) reviewing the planning proposal at a preliminary stage and then deciding whether the planning proposal is to proceed.<sup>199</sup> The role of the gateway is to act as a checkpoint to ensure that the planning proposal is justified before further studies are done and resources are allocated to the preparation of a plan.

The gateway will decide whether the planning proposal can proceed and, if so, what community consultation is required, including whether a public hearing will be necessary as well as which other government agencies should be consulted. The gateway will also set time limits for the completion of the process.

Community consultation is usually by way of written submissions and there may be an opportunity to attend a public hearing. It is important to participate in these formal processes as they provide the only opportunity for the community to have input into the final LEP. It can be a more effective and efficient use of your time to get involved in the planning system at this level than to oppose particular developments later on.

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<sup>197</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 5(c).

<sup>198</sup> Relevant planning authorities include local councils, Joint Regional Planning Panels and the Director-General of Planning.

<sup>199</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56.

Your council should notify you when a new LEP is being made or when an LEP is being amended. You can track the progress of a planning proposal through the gateway process on the Department of Planning's website.

For more information on planning proposals and the process for making LEPs, see the EDO factsheets.<sup>200</sup>

## How can I find out about proposed developments in my community?

The right of the public to be notified and consulted on a development depends on the type of development. Notification methods can vary. Sometimes an announcement will be made in the local paper. At other times a letter will be sent to all neighbours. All major project applications are placed on the Department of Planning's website. Most local councils display current development applications on their website.

## Public notification of proposed developments

- **Exempt and complying development**

There is no right to be notified or to comment on exempt and complying development applications. Neighbours will receive a courtesy notice within 10 days of a complying development certificate being issued.

- **Advertised development**

Some Development Control Plans (DCPs) deal with notification requirements for certain types of development.<sup>201</sup> These DCPs are legally binding and you have a right to be notified of any development covered by the DCP in accordance with the provisions of the DCP. You will also have a right to comment on it.

- **Designated development**

All designated development must be publicly notified and the public has the right to comment.

- **Major projects**

All major projects must be publicly notified and the public has a right to comment.<sup>202</sup>

## Public notification of referrals of development proposals to the Federal Minister for Environment

For developments requiring a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to the Federal Minister for Environment there is a period of 10 business days for the public to comment (with no extensions). You can find out when a proposal is available for comment by looking at the Department of Environment, Water, Heritage and the Arts, EPBC Act Public Notices webpage.<sup>203</sup>

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200 [http://www.edo.org.au/edonsw/site/factsh/fs02\\_1\\_1.php](http://www.edo.org.au/edonsw/site/factsh/fs02_1_1.php)

201 *Environmental Planning and Assessment Act 1979* (NSW), s. 79A(2).

202 Major Projects are developments assessed under Part 3A of the *Environmental Planning Assessment Act 1979* (NSW). For more information see Chapter 4.

203 <http://www.environment.gov.au/epbc/notices/>

## Public notification of environment protection licence applications

DECCW must publish the details of each environment protection licence application it receives on its public register.<sup>204</sup> You can make a submission about an environment protection licence and DECCW must consider public submissions when deciding whether to grant a licence, including any public submissions made under the development consent process.<sup>205</sup>

## Obtaining information

To participate effectively in government processes, you need as much information as possible about your issue. Much of this information is publicly available free of charge. Other information may only be obtained through formal processes.

## Information you may need

The following list is of information you may need depending on what your campaign is about and where you can find it. This list is not exhaustive. You may need different information depending on your objectives.

### *For making submissions on planning proposals*

- All existing environmental planning instruments and zoning laws that apply to the area.
- The planning proposal. This will be advertised and on public display.
- Environmental studies commissioned by the council, if any. These will be displayed with the planning proposal.
- Any reports or minutes of meetings held by local council and its relevant committees. Council meetings are generally open to the public and most councils have business papers available on request. These papers often include important reports of council officers, giving the history of the matter and the particular officer's appraisal of the issue. They also contain an insight into what the council hopes to achieve by developing or amending a planning instrument.
- Any independent studies available. Contact local and peak conservation groups to see if they have any information about your area.

### *For making submissions on development applications*

You will need most of the information listed above as well as:

- The development application. You can request to make a copy but may have to pay reasonable copying costs. Some development applications may also be available on the council website or the Department of Planning website.
- All supporting documents for the development application such as environmental assessment reports.
- Expert opinion or at least well-informed opinion on the potential harm you are concerned about. List your concerns, referring to particular proposed consent conditions if relevant. This is not essential at this stage but will give your submission more force.

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<sup>204</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 308(2)(a).

<sup>205</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 45(l).

## Access to information

Both NSW and the Commonwealth have laws provide the public with access to documentation and information held by public agencies.

The NSW Government has reformed the NSW Freedom of Information regime in 2010.

The new 'Open Access to Information' regime is enshrined in the *Government Information (Public Access) Act 2009* (NSW) (the GIPA Act). The GIPA Act replaces the *Freedom of Information Act 1989* (NSW).

The intention of the Open Access to Information process is to make information available to members of the public unless there is an overriding public interest against disclosure. Agencies in NSW now have an obligation to proactively release information free of charge.

## How do I access government information?

There are four ways in which government information is available:

1. Mandatory release

Certain information must be disclosed on an agency's website, free of charge. This includes the agency's policy documents, current publication guide, disclosure log and register of government contracts.<sup>206</sup>

2. Proactive release

You can ask the agency what information they will make available to the public, in addition to the information contained on their website. Agencies are encouraged to release as much government information as possible, in an appropriate way and free of charge (or at the lowest reasonable cost).<sup>207</sup>

3. Informal request

You can ask for specific information. Agencies are encouraged to release information without the need for a formal application, unless there are good reasons to require one.<sup>208</sup>

4. Formal application

This is the last resort. If you haven't been successful in accessing the information you need in any other way you can formally request the information. This will require a formal access application.<sup>209</sup>

## Submission writing

Written submissions are the primary method through which the community can participate in environmental decision making so it is important to write submissions that will clearly and effectively communicate your points. This section provides tips on how you can prepare a submission that is as persuasive as possible. The information here can be applied to submissions on planning proposals or submissions on particular developments.

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<sup>206</sup> *Government Information (Public Access) Act 2009* (NSW), s. 6.

<sup>207</sup> *Government Information (Public Access) Act 2009* (NSW), s. 7.

<sup>208</sup> *Government Information (Public Access) Act 2009* (NSW), s. 8.

<sup>209</sup> *Government Information (Public Access) Act 2009* (NSW), s. 9.



### *Identifying key issues*

Work out what your key concerns are and focus on these. If you try to include everything you can possibly think of in the submission the good points will get lost in the weaker points and your submission will be less effective.

### *Supporting with facts*

Include factual information to back up your arguments. Your arguments will be better received if they are supported by evidence and you will have a far greater chance of influencing the decision maker than if you lodge a submission containing only unsubstantiated claims.

Where possible, attach relevant supporting documents, physical evidence, observations and opinions from scientists to support what you are saying.

### *Using a clear structure and layout*

Use headings and bullet points to highlight key concerns. Use summaries to highlight key recommendations/concerns.

Remember the decision maker may receive many submissions so you want yours to be easy to read and well expressed. Write clearly and concisely. A rambling stream of consciousness will not effectively communicate your ideas.

### *Writing objectively*

Use clear, calm language and maintain a professional style. Overly emotional arguments are not as convincing and often have an adverse effect upon the reader.

### *Remember!*

Have your submission in on time. If you can not meet the deadline ask for an extension, or if an extension is not granted, do the best you can in the time frame.

Follow up on your submission – follow up phone calls to the decision maker can ensure that your issues are at the forefront of their minds at all times.

Include your name and contact details on your submission.

Avoid 'form' or pre-prepared submissions where possible, and encourage people to write in their own style.

It may be worth considering mounting a wider campaign against the proposal, including through the local media.

## **Appearing at a public hearing**

Sometimes, there will be a public hearing about a proposal. This may be before the council, the Joint Regional Planning Panel or the Planning Assessment Commission. A public hearing gives the public the opportunity to comment on planning proposals and development applications by bringing potential issues to light. It is important for individuals making submissions during public hearings to keep in mind the terms of reference for the hearing, as the planning body holding the hearing is bound by the terms of reference which limits the matters that it can

consider. In this respect, there is nothing to be gained from attacking the planning body members or questioning their authority. Other things to keep in mind are:

- Dress neatly, as if you were going to court;
- Be punctual, make sure you are there on time;
- Speak clearly and loudly;
- Practise beforehand and time yourself so you can be sure that you will fit in all of your key points;
- Come prepared with a list of points you want to cover during your presentation; and
- Try to keep track of time while you are presenting.

Some public hearings may have binding time frames in place to achieve greater efficiency during the hearing. This creates issues when important, sometimes critical, submissions are being presented to the planning body for consideration, but the presenter's allocated time is up. The chairperson gives a warning shortly before the presenter's time is up, and may cut the presenter off if they continue to speak beyond their allocated time.

The public hearings are quite formal in nature. It is important to inform yourself of who you will be presenting before and what their procedures are.

### **What are Joint Regional Planning Panels?**

Joint Regional Planning Panels are regional panels made up of 5 people who have experience in the planning industry. They have three permanent members appointed by the Minister for Planning and two representatives from the local council of the local government area where the development is located. JRPPs can make decisions about certain types of development, assist with making Local Environmental Plans and advise the Minister for Planning regarding State significant developments.<sup>210</sup>

### **What is the Planning Assessment Commission?**

The Planning Assessment Commission is an independent planning body that assesses projects that would otherwise be determined by the Minister for Planning. The Commission can either review the environmental impacts of a development, or in some cases, decide whether to approve the development. The Commission is independent and is not subject to the direction or control of the Minister (except in relation to procedure and appointment of members).<sup>211</sup>

### **Other lobbying activities**

Lobbying is the process of winning support for your issue. You can lobby by writing letters, meeting in person or getting media coverage for your issue. You should lobby key decision makers such as local councillors, members of Parliament and influential organisations.

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<sup>210</sup> For more information on JRPPs go to: <http://jrpp.nsw.gov.au>

<sup>211</sup> For more information on the Assessment Planning Commission go to: [www.pac.nsw.gov.au](http://www.pac.nsw.gov.au)

## Letters

Writing a letter to a politician, whether local, State or Federal, is a powerful campaign tool. The receipt of letters, particularly from local constituents, on a particular issue can motivate a politician to find out more about that issue and take action to satisfy the concerns of voters. This is of particular use when elections are scheduled. Letters are most effective when many people write to the same politician. Avoid 'form' or pre-prepared letters where possible, and encourage people to write in their own style. Faxed and emailed letters are treated the same as posted letters by politicians.

Writing to other decision makers, such as a Minister; a developer; a government agency or regional committee, is also effective in raising awareness of your concerns early on, and in opening communication with various decision makers. This may help to resolve the areas of concern without resorting to legal action.

Many of the same considerations for writing submissions apply to writing letters.

## Petitions

Petitions to government, while not as effective as letters, can give you the numbers to encourage decision makers to take your concerns seriously. When lobbying, both the quality and quantity of petitions can help.

Petitions may be presented to any person, to local councils, or to State or Federal Parliaments. Petitions to State or Federal Parliaments must be presented by a member of Parliament.

There are guidelines for the format of petitions to State and Federal Parliaments.<sup>212</sup>

Email petitions, where an email is forwarded inviting people to add their names to the bottom of lists are not well regarded. This is because the names are repeated on a number of different emails so it is not an accurate reflection of the number of people who signed the petition.

A more effective choice is the internet petition where supporters are directed to a specific website to add their names to a single list.

## Information Sheet

An information sheet, or fact sheet, can reach a lot of people. Here are some useful tips:

- Keep the information simple and accurate.
- Keep it short, no more than one page.
- State the most dramatic or influential aspect in the first paragraph.
- Distribute the fact sheet at community events, stalls, through community centres or through a letterbox drop and, if you find enough support, call a public meeting. If you organise a public meeting or rally, you may need to inform the Commissioner of Police.
- Avoid making defamatory statements.<sup>213</sup>

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212 To obtain a copy of these guidelines, call the State or Federal Parliament or visit one of the following websites [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au) (State Parliament) or [www.aph.gov.au](http://www.aph.gov.au) (Federal Parliament).

213 Refer to the EDO's online line campaigners guide: *Campaigning and the Law in NSW* available at: [www.edo.org.au/edonsw/site/campaigning/campaigning\\_00.php](http://www.edo.org.au/edonsw/site/campaigning/campaigning_00.php)

- Include practical suggestions for how people can help your campaign, such as writing a letter; what key points they may address in the letter; donating money or volunteering.
- Include phone, fax and Internet contact numbers for more information.

### *Non-violent action*

Part of your campaign may involve non-violent protest actions such as a public rally, blockade or sit-in. There are many legal issues to consider in arranging this type of action. For example, public rallies can be authorised by serving notice in the approved form on the Commissioner of Police. Another consideration is whether people are likely to get arrested. The EDO has publications on the legal aspects of non-violent action including a comprehensive guide to Campaigning and the Law in NSW. To download the guide, go to: [www.edo.org.au/edonsw/site/publications.php#campaign](http://www.edo.org.au/edonsw/site/publications.php#campaign). For legal advice about your particular action, call the EDO or your local community legal centre.

## **Using the media**

The media is an important tool for informing large numbers of people and gathering support for your issue.

### *Newspapers*

Press releases and press briefings keep the media informed of your campaign. Briefings (a 1-2 page summary of the issues and your activities) are useful to provide to journalists who specialise in environmental reporting, or who have expressed an interest in reporting on your issue.

Press releases are useful to notify the media of major events relating to your campaign and should:

- Express your main point in the heading and first paragraph. Think of an upside down triangle with the most important information at the top. Don't get bogged down in technical detail.
- Deal with one issue at a time.
- Be kept short (maximum one page) and clear.
- Include the name of your group and contact numbers of people who can provide more information.

Press releases sent to a particular person are more likely to be read. Contact relevant journalists before and after the event you want them to cover.

### *Radio and TV*

Prepare what you are going to say before an interview and condense it into about three sentences. In a 30 second timeslot on television or radio news (known as a 'grab'), you will often only be able to make one point. Decide on that point in advance and repeat it during the interview, rather than trying to make many points and possibly having only what you consider to be a minor point reported. If possible, have a chat with the reporter beforehand to make sure they have enough information to ask relevant questions of you.

# Chapter 17:

## Taking legal action

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In some cases, it may be necessary to go to Court to challenge or enforce a development consent or to challenge the approval of a planning instrument. If successful, a Court action can result in stopping an activity or modifying it so that it is less environmentally damaging. Court cases may also create legal precedent, which is a decision about the law that will be followed in future cases.

However, there are a number of disadvantages to Court actions. Court actions are expensive in terms of money and time. If you are unsuccessful, you may be required to pay the costs of the other parties to the proceedings. An unsuccessful action can create a bad precedent for future Court actions. As a result, Court action is usually only considered when other lobbying activities have failed.

### Getting legal advice

Before you take Court action, it is essential that you obtain legal advice to work out whether you have a case. It is best to get advice from a specialist environmental lawyer. The Environmental Defender's Office provides free legal advice to community members and groups. You can also contact the Law Society of NSW to get a referral to private lawyers who specialise in environmental law.

You or your group may be eligible for legal aid for a public interest environmental law case. A grant of legal aid will include an indemnity, which means that Legal Aid will pay the other side's costs if you lose the case.

### *Get advice quickly*

You should get legal advice as soon as an issue arises because delay can adversely affect Court cases. Once a decision has been made, there are strict deadlines for commencing appeals. Sometimes a delay can mean losing your case even if your legal claim is correct. Delays can also be expensive.

There are two major types of Court action which a community member may consider taking. Where a person has the right to challenge a designated development or major project approval, that person can commence a merits appeal.<sup>214</sup> This is known as a Class 1 action in the Land and Environment Court. In a merits appeal, the Land and Environment Court considers the development application afresh and determines whether or not consent should be granted and on what conditions.

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<sup>214</sup> A merits appeal is only available for a major project approval if the development would have been designated development if Part 3A of the *Environmental Planning and Assessment Act 1979* did not apply and the following has not occurred:

1. A concept plan has been approved for the development;
  2. The development has been declared a critical infrastructure project; or
  3. The project has been subject of a review of by the Planning Assessment Commission.
- Environmental Planning and Assessment Act 1979* (NSW) s. 75L.

Most other types of action are 'judicial review' actions. Judicial review essentially involves a 2-stage inquiry. The first stage inquires whether the decision is or could be legally invalid. The second stage decides what to do about it. One of the core principles of judicial review is that a finding that a decision is invalid does not necessarily lead to the decision being set aside or the person who made the application getting what they wanted. This is because the Court must take into account discretionary factors in determining whether or not to grant a remedy. The kind of factors the Court may take into consideration include the seriousness of the breach, the impact on the community and the likelihood of environmental harm.

In judicial review proceedings, the Court will not consider the merits of the activity that you are complaining about, that is, whether or not it is a good idea. For example, the Court can look at whether a new LEP has taken the requirements of SEPP 71 into account, because a council is required by law to take these requirements into account. However, the Court will not consider whether the provisions of the LEP are good.

If you object to a designated development or major project approval on merits grounds, you only have 28 days from the date you are notified of the decision to go to the Land and Environment Court. For judicial review proceedings, you have 3 months.

It is also possible, in some circumstances, for members of the public to commence proceedings in the Land and Environment Court to enforce an environmental law or the conditions attached to a development. For example, the EDO has represented a community group in seeking to enforce pollution laws against an electricity generator.

### *Do I need to be legally represented?*

If you are involved in a Court case, you have three options. You can:

- Put forward your case in Court yourself,
- Be represented by another person without legal qualifications, acting as your agent, or
- Be represented by a solicitor or barrister.

Representation by an experienced lawyer is particularly advisable for judicial review matters. For merits appeal matters, it is quite possible to represent yourself but it usually helps to have someone assisting you with knowledge of the way the Court works. This does not necessarily have to be a lawyer. For example, in building matters an architect may sometimes represent the applicant. If you decide to proceed without legal representation, you will need to research the Court procedures.<sup>215</sup>

### *When can I take action?*

Before you or your organisation can take legal action, you must find out if you have a right to do so under the relevant legislation. This right to bring a matter before Court is known as 'standing'. Below is an outline of the standing rules in relation to the coastal protection laws discussed throughout this booklet.

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215 For more information go to: [www.lawlink.nsw.gov.au/lec](http://www.lawlink.nsw.gov.au/lec)

### *Taking legal action under NSW laws*

Any member of the public can take action in the Land and Environment Court in relation to a breach of most NSW legislation with the exception of the *Coastal Protection Act 1979*.<sup>216</sup>

Actions under NSW environmental and planning legislation will be commenced in the Land and Environment Court.

### *Taking Legal action under Federal laws*

The main Federal environmental law is the EPBC Act. Only the Minister for the Environment or an interested person can take action under the EPBC Act. 'Interested person' refers to:

- Any organisation that is affected by the conduct in question; or
- Individuals or conservation groups that have been actively involved in the environmental issues for at least two years prior to the commencement of the opposed conduct (or in the case of proposed conduct, at least 2 years prior to commencing Court proceedings).

For advice on whether you or an organisation you are involved with is an 'interested person' contact the EDO.

Any action will be commenced in the Federal Court.

### *What remedies are available if I take a legal action in Court?*

If an environmental law is broken, the Land and Environment Court or the Federal Court (depending on whether the law is Commonwealth or State) can order remedies to correct the breach. Remedies include:

- **An injunction**

An injunction is a Court order stopping someone from doing something or requiring someone to do something; or

- **A declaration**

A declaration is a statement by the Court setting out what the law is or whether the law has been broken in a particular case.

The Land and Environment Court can set aside a development consent which is in breach of the law. The Court can also refuse a development consent or impose new conditions where the type of action is a merits appeal.

The Land and Environment Court has no power to award damages. If there is damage to property or rights, an action for damages may be taken to the Supreme Court of NSW. The Federal Court can award damages in appropriate circumstances.

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<sup>216</sup> *Coastal Protection Act 1979* (NSW) ss. 55L, 55M.

# Chapter 18:

## Getting involved in community organisations that care for the coast

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Below is a summary of some organisations that work to maintain and improve the health of coastal areas.

### *Coastcare*

Coastcare is a group of community volunteers caring for their coast. Coastcare volunteers identify local environmental problems and work together to achieve practical solutions. There are currently 60,000 active Coastcare volunteers in 2,000 Coastcare groups all around the country.

Coastcare and Landcare groups tackle problems like dune erosion, loss of native plants and animals, storm water pollution, weeds and control of human access to sensitive areas.

To search for a Coastcare group in your area go to: [www.coastcare.com.au](http://www.coastcare.com.au)

### *Landcare*

Landcare is a national network of thousands of locally-based community groups who care for our country. Landcare is the biggest environmental volunteer movement in Australia. There are Landcare groups in most communities in NSW. You can find out about your local Landcare group by contacting Landcare Australia. For more information go to [www.landcareonline.com.au](http://www.landcareonline.com.au) or call 1800 151 105.

### *CoastKeepers*

CoastKeepers involves the community in regular activities which explore and safeguard the NSW coast. CoastKeepers involves volunteers in various activities including marine surveys, removal of underwater debris, bush regeneration, removal of beach rubbish, removal of aquatic weeds, volunteer training days and other community events in and around our oceans.

For more information go to: [www.coastkeepers.org.au](http://www.coastkeepers.org.au) or call (02) 9299 0000.

### *Waterwatch*

Small waterways make up three-quarters of the total stream network within any given catchment. These can be monitored most effectively by local communities, including land managers. The Waterwatch program can tailor a package of equipment and methods that suit your site and issue of interest, and your preferred frequency and type of testing.

For more information go to: [www.waterwatch.nsw.gov.au](http://www.waterwatch.nsw.gov.au) or call: (02) 9895 7402.

### *Streamwatch*

Streamwatch is a long running water monitoring program run in partnership between Sydney Water and the Sydney Catchment Authority (SCA). It supports local communities and schools



across Sydney, the Blue Mountains, Illawarra and Southern Highland regions. Streamwatch groups investigate and take action on water quality and catchment and ecosystem health.

Streamwatch began in 1990. There are now over 250 community, school and other groups that monitor water quality and macroinvertebrates (water bugs) across more than 600 sites.

For more information go to: Sydney Water 1800 724 650 or by email on [streamwatch@sydneywater.com.au](mailto:streamwatch@sydneywater.com.au)

Sydney Catchment Authority 02 4724 2468 or by email on [streamwatch@sca.nsw.gov.au](mailto:streamwatch@sca.nsw.gov.au)

### *Dune Care*

Many coastal communities also have Dune care groups that work to maintain and improve the health of dune systems. To find out more about Dune care groups in your area contact your local council.

### *Greening Australia*

Greening Australia has over 25 years of experience in creating sustainable environmental outcomes through a wide range of conservation activities. Greening Australia has a network of over 350 staff in locations across the continent and works with people from remote, regional and metropolitan communities. For more information go to [www.greeningaustralia.org.au](http://www.greeningaustralia.org.au) or call (02) 9560 9144.

# USEFUL CONTACTS

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## **Australian Conservation Foundation**

Suite 504, 32 York St Sydney NSW 2000

Phone: (02) 8270 9900

Fax: (02) 8270 9988

Website: <http://www.acfonline.org.au/>

## **Catchment Management Authorities (CMA) NSW covering the Coastal Zone**

Website: <http://www.cma.nsw.gov.au/>

### *Northern Rivers*

PO Box 618, Grafton NSW 2460

Phone: (02) 6642 0622

Fax: (02) 6642 0640

Website: <http://www.northern.cma.nsw.gov.au/>

### *Hunter-Central Rivers*

(Private Bag 2010) Paterson NSW 2421

Phone: (02) 4930 1030

Fax: (02) 4930 1013

Website: <http://www.hcr.cma.nsw.gov.au/>

### *Hawkesbury-Nepean*

Locked Bag 2048

Goulburn NSW 2580

Phone: (02) 4828 6747

Fax: (02) 4828 6750

Website: <http://www.hn.cma.nsw.gov.au/>

### *Sydney Metropolitan*

PO Box 3720 Parramatta 2124

Phone: (02) 9895 7898

Fax: (02) 9895 7330

Website: <http://www.sydney.cma.nsw.gov.au/>

### *Southern Rivers*

PO Box 3095 Wollongong East

NSW 2500

Phone: (02) 4224 9700

Fax: (02) 4224 9669

Website: <http://www.southern.cma.nsw.gov.au/>

## **Climate Watch**

126 Bank Street, South Melbourne,

VIC 3205

Phone: (03) 9682 6828

Fax: (03) 9686 3652

Website: <http://www.climatewatch.org.au/>

## **Coast Care**

Website: <http://www.coastcare.com.au/>

## **Coastkeepers**

SPO Box A96

Sydney South NSW 1235

Phone: (02) 9299 0000

Fax: (02) 9290 2525

Website: <http://www.coastkeepers.org.au/>

## **Department of Environment, Sustainability, Water, Population and Communities**

GPO Box 787 Canberra ACT 2601

Phone: (02) 6274 1111

Website: [www.environment.gov.au/](http://www.environment.gov.au/)

## **Dune Care**

Contact your local council or Landcare NSW for details of your local Dune care group

## **Earth Watch**

126 Bank Street, South Melbourne,

VIC 3205

Phone: (03) 9682 6828

Fax: (03) 9686 3652

Website: [www.greeningaustralia.org.au](http://www.greeningaustralia.org.au)

## **Greening Australia**

142 Addison Rd, Marrickville, NSW 2204

Phone: (02) 9560 9144

Fax: (02) 9550 0676

Website: [www.greeningaustralia.org.au](http://www.greeningaustralia.org.au)

**Landcare NSW**

PO Box 5666,  
West Chatswood NSW 1515  
Phone: (02) 9412 1040  
Fax: (02) 9412 1060  
Website: [www.landcarensw.org](http://www.landcarensw.org)

**Legal Information Access Centre**

State Library of NSW  
Macquarie St, Sydney NSW 2000  
Phone: (02) 9273 1558  
Website: [www.legalanswers.sl.nsw.gov.au](http://www.legalanswers.sl.nsw.gov.au)

**Nature Conservation Council**

PO Box 137, Newtown, NSW 2042  
Phone: (02) 9279 2466  
Fax: (02) 8026 8301  
Website: [www.nccnsw.org.au](http://www.nccnsw.org.au)

**NSW Department of Environment,  
Climate Change and Water**

PO Box A290, Sydney South NSW 1232  
Phone: (02) 9995 5000  
Fax: (02) 9995 5999  
Website: <http://www.environment.nsw.gov.au/>

**NSW Department of Planning**

GPO Box 39, Sydney, NSW 2001  
Phone: (02) 9228 6333  
Fax: (02) 9228 6555  
Website: [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

**NSW Department of Industry and  
Investment - Primary Industries**

PO Box 21, Cronulla NSW 2230  
Phone: 1300 550 474  
Website: [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au)

**To report a pollution incident to NSW  
Department of Environment, Climate  
Change and Water**

Phone: 131 555, or 02 9995 5555  
(if calling from outside NSW)  
Website: <http://www.environment.nsw.gov.au/pollution/>

**Streamwatch**

Phone: Sydney Water 1800 724 650  
Sydney Catchment Authority (02) 4724 2468  
Website: [www.streamwatch.org.au](http://www.streamwatch.org.au)

**Total Environment Centre**

PO Box A176, Sydney South, 1235  
Phone: (02) 9261 3437  
Fax: (02) 9261 3990  
Website: <http://www.tec.org.au/>

**Wilderness Society**

PO Box 249, Haymarket, NSW 1240  
Phone: (02) 9282 9553  
Fax: (02) 9282 9557  
Website: <http://www.wilderness.org.au/>

**WIRES**

PO Box 260, Forestville, NSW 2087  
Phone: 13000 WIRES or 1300 094 737  
Fax: (02) 8977 3399  
Website: [www.wires.org.au](http://www.wires.org.au)

# GLOSSARY

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**Appropriate regulatory authority** – The body responsible for regulating pollution from a particular activity. Who the appropriate regulatory authority is will depend on what type of activity is being carried out, the size of the activity and where the activity is being carried out. The appropriate regulatory authority may be DECCW, police or the local council.

**Development** – The erection or demolition of a building or structure, the carrying out of a work, the use of land or the subdivision of land.

**Development Consent** – Permission granted by a consent authority to carry out a particular development.

**Consent authority** – The authority responsible for determining an application for development consent.

**Environmental Planning Instrument (EPI)** – Legal instruments that set out what development can take place on particular land and the requirements relating to that development. The two types of EPIs are Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPPs).

**Environment Protection Licence** – Licences issued by the Department of Environment, Climate Change and Water for the regulation of pollution from a particular activity.

**Judicial Review** – A review of the legality of a decision conducted by a judge.

**Merits Appeal** – An appeal to the Land and Environment Court from a decision of a consent authority about the merit of the proposed development.

**Planning Proposal** – An amendment to a Local Environmental Plan or the creation of a new Local Environmental Plan which explains the intended effect of the proposed LEP.

**Relevant Planning Authority** – The 'relevant planning authority' sponsors a 'planning proposal' through the gateway process. The relevant planning authority will usually be a local council but the Planning Minister can appoint other individuals or bodies as the relevant planning authority.

**Section 149 Certificate** – Also called planning certificates. These certificates tell you what environmental planning instruments apply to the land. A section 149 certificate can be obtained from your local council.



CARING  
FOR  
OUR  
COUNTRY



**Environmental  
Defender's  
Office (NSW)**

[www.edo.org.au/edonsw](http://www.edo.org.au/edonsw)

**Sydney Office**

Level 1, 89 York St,  
Sydney NSW 2000  
Tel: (02) 9262 6989  
Fax: (02) 9262 6998  
Freecall: 1800 626 239

**Northern Rivers Office**

Level 1, 71 Molesworth Street  
PO Box 868, Lismore NSW 2480  
Tel: (02) 6621 1111 or 1300 369 791  
Fax: (02) 6621 3355

