

Legal Strategies for Community Campaigns

ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

ABOUT US

Environmental Defender's Office

- A community legal centre specialising in public interest environmental law
- Mission: To empower the community to protect the environment through law
- Functions
 - Legal Advice and Representation
 - Policy and Law Reform
 - Community Education

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ABOUT US

EDO Casework Guidelines

- Free initial advice is available to everyone via the EDO environmental law advice line.
- The EDO will consider providing further assistance if:
 - The matter involves a public interest environmental issue.
 - The matter involves a real threat to the environment.
 - The EDO has the resources to properly advise you.
 - The matter has reasonable prospects of success.

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CASEWORK GUIDELINES

Legal Strategies

- **Exercising your legal rights.**
 - eg. access to information
- **Participating in legal processes.**
 - eg. planning, development assessment
- **Litigating in the courts.**
 - eg. development appeals

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CASEWORK GUIDELINES

Access to Information


- Accurate information is vital for effective campaigning and legal action
- Key sources of information include:
 - internet, news media and library research
 - evidence gathering and field research
 - local, state and national environment groups
 - local, state and national government agencies

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ACCESS TO INFORMATION

Local Government

- Local governments are legally required to provide certain information to the public
- For example:
 - development applications and associated documents
 - business papers and minutes from council and committee meetings (not including closed meetings)
 - recommendations and resolutions from council and committee meetings (including closed meetings)

 *Local Government Act 1993* (Section 12)

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ACCESS TO INFORMATION

Freedom of Information

- Legally enforceable right to access information
- Local, State and Commonwealth government
- Subject to a range of exemptions, including:
 - commercial in confidence
 - investigation records
 - cabinet documents
 - working drafts

- ① *Freedom of Information Act 1989 (NSW)*
- ① *Freedom of Information Act 1982 (Commonwealth)*

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ACCESS TO INFORMATION

Environmental Planning

- **Environmental Planning Instruments**
 - Local Environmental Plans (LEP)
 - prepared by council
 - opportunity for public comment
 - Regional Environmental Plans (REP)
 - prepared by Department
 - opportunity for public comment
 - State Environmental Planning Policies (SEPP)
 - prepared by Department
 - public comment at discretion of Minister

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ENVIRONMENTAL PLANNING

Environmental Planning

- Opportunities for participation in the planning process:
 - **Local Environmental Plans:**
notification, exhibition, public comment
 - **Regional Environmental Plans:**
notification, exhibition, public comment
 - **State Environmental Planning Policies:**
at the discretion of the Minister
- Any person may challenge a new environmental planning instrument if there has been a breach of the law in the making of the instrument.

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ENVIRONMENTAL PLANNING

Environmental Approvals

- A range of environmental approvals may be required to carry out a particular development or activity
- For example:
 - development consent
 - environmental protection licence
 - threatened species approval
 - land clearing approval
 - water licence
 - cultural heritage permit
 - federal environmental approval

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ENVIRONMENTAL APPROVALS

Environmental Advocacy

- Effective involvement in environmental decision-making may require the use of a range of advocacy tools.
- For example:
 - submissions, letters and petitions
 - meetings with decision-makers
 - posters and information sheets
 - internet, newspaper, radio and television
 - public meetings and information sessions
 - protest and non-violent direct action

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PUBLIC PARTICIPATION

Submission Writing

- Environmental planning and assessment processes provide formal opportunities for public comment, usually via written submissions
- Note that failure to make a submission may affect your legal rights
- Addressing the matters to be taken into account by decision maker will increase the effectiveness of your submission

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PUBLIC PARTICIPATION

Submission Writing

To increase the effectiveness of your submission:

- provide evidence to support your view
 - observations and physical evidence
 - scientific or technical evidence
 - documentary evidence
- attach any relevant supporting documents
- use clear, calm language - don't be abusive
- use tools such as sub-headings, numbering and bullet points
- include your name and address and date your submission

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PUBLIC PARTICIPATION

Development Appeals

- A decision to grant or refuse development consent may be appealed to the Land and Environment Court.
- The **merits** of the decision may be challenged by:
 - the **developer** against refusal or consent conditions within 12 months of notification
 - an **objector** to a designated development against grant within 28 days of notification
- The **legality** of the decision may be challenged by **any person** within 3 months of notification

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DEVELOPMENT APPEALS

Legal Advice

- Legal advice can play an important role in dealing with local environmental issues.
- To obtain legal advice on a public interest environmental law matter, contact:
 - Environmental Defender's Office 02 9262 6989
 - Public Interest Law Clearing House 02 9299 7833
 - Law Access 1300 888 529
 - NSW Law Society 02 9926 0333
 - Community Legal Centre
 - Private Solicitor or Barrister

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LEGAL ADVICE

Legal Advice

- It is important to seek legal advice as soon as possible, as delay may prevent you from taking legal action.
- If you are seeking legal advice, it is useful to provide as much information as possible about your case.
- For example:
 - development applications and consent conditions
 - minutes and business papers of council meetings
 - environmental impact assessment documents
 - environmental protection licences
 - evidence of environmental harm

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LEGAL ADVICE

Costs of Legal Action

- Taking legal action can be a time consuming, expensive and exhausting process.
- The financial costs of legal action may include:
 - fees for legal advice and representation
 - fees for technical reports and expert witnesses
 - incidental expenses, such as photocopying
 - court fees (may be waived in certain cases)
 - other side's costs

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LEGAL ADVICE

EDO Environmental Law Advice Line

Free initial legal advice on planning and environmental law matters

Tuesday-Thursday 2.30pm-5.30pm

Telephone: 02 9262 6989

Toll Free: 1800 626 239

website: www.edo.org.au/edonsw

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ENVIRONMENTAL LAW ADVICE LINE