



## About the EDO

- 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;
  - Scientific Assessment and Advice;
  - Policy and Law Reform; and
  - Community Legal Education

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## Overview of talk

- Overview of legislation that impacts on marinas
  - Part 3A
  - Part 4- Designated development
- Part 3A decisions that could impact on marinas

Other decisions Land and Environment Court

- Rose Bay marina
- Chinderah marina
- Burraner marina
- Roseville marina

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## Relevant legislation

- ▣ Marinas of certain size are “designated development” under *Environmental Planning and Assessment Regulations* cl 23
- ▣ Trigger is marinas/water or shoreline facilities where you can park or store vessels or have moorings:
  - ▣ 15 or more vessels 20 m or more
  - ▣ 30 or more vessels within 100m of wetland/aquatic reserve or involve dredging or groyne or certain car spaces; or
  - ▣ 80 or more vessels
  - ▣ Also includes out of water maintenance capacities for certain vessels

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## Relevant legislation

- Designated development means an EIS is required
- Objectors also get right of merits appeal to Land and Environment Court
- If not designated, then normal Council process for any development application applies
- SEPP 71 – Coastal protection will usually apply also
- If in Sydney – Sydney Regional Environment Plan may also apply (SREP 23)

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## Relevant legislation

Changes to *Environmental Planning and Assessment Act 1979* introduced Part 3A.

- New streamlined process for dealing with major projects
- Marinas now defined as major project under SEPP (Major Projects) Clause 14
- Similar definition to designated development and includes any facility to moor more than 30 vessels in various Sydney Harbours or more than 80 vessels in other water or environmentally sensitive areas of state significance
- Does exclude matters only of local environmental significance

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## Major changes –Part 3A

- No need for EIS, Director-General of Planning decides on environmental assessment requirements
- Minister for Planning makes decision, current reforms establishing Planning Assessment Commission also to make some decisions
- Minister has wide discretion to approve the project unlike s.79C(1) of EP & A Act
- Minister not required to consider Local Environmental Plans but may do so- s.75](3)
- Quick search found at least 7 marinas before Minister

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## Walker v Minister for Planning

- Application under Part 3A for approval of a concept plan for residential subdivision and a retirement development at Sandon Point, Thirroul.
- Judicial review – challenge to the legality of the Minister's decision by Jill Walker
- Minister's decision to approve concept plan declared to be invalid by the Land and Environment Court because the Minister failed to consider ecologically sustainable development (climate change flood risk) when assessing the concept plan

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## Walker v Minister for Planning (continued)

*Climate change presents a risk to the survival of the human race and other species. Consequently, it is a deadly serious issue. It has been increasingly under public scrutiny for some years. No doubt that is because of global scientific support for the existence and risks of climate change and its anthropogenic causes. Climate change flood risk is, prima facie, a risk that is potentially relevant to a flood constrained, coastal plain development such as the subject project.*

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## Chinderah marina Milne v Minister for Planning

- Objector challenged approval of marina by Minister
- Court upheld appeal on its merits –Jagot J
- Jagot J considered at length social and economic impacts on community disproportionate to benefits so as to refuse:
  - Considered community at length including high indigenous population.

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## Milne (continued)

- Found proposal would exclude physically many from area of river that was used for recreation and fishing near centre of town
- Also considered impact in displacing affordable housing in local caravan parks and in employing locals
- Emphasised need for social and economically sustainable development for local and regional community
- Need for coordinated approach in transforming village atmosphere

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## Milne (continued)

- Considered visual impacts particularly on Mt Warning (including from lay witnesses)
- Judge stressed high quality and significant view and found visual impacts severe
- Found turbidity from boat use would lead to threat to seagrasses and were of importance to region
- Also concerned about lack of information about impact of marina on riverbank erosion in the EIS
- Considered flood impact also

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## Rose Bay Marina- Addenbrooke v Woollahra Municipal Council

- Developer appeal against Council's deemed refusal
- Main issue before the Court was the visual impacts
- Proposal would result in 159 marina berths, 124 at Rose Bay and 34 at Point Piper with 24 hour access
- Council received 1429 submissions, 750 objections and 679 submissions in support

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## Rose Bay marina (cont)

*Sydney Harbour is one of the most beautiful harbours in the world. It provides pleasure not only to local residents and mariners but to many visitors from Australia and abroad. Rose Bay is a significant part of that experience. Consequently, the impact of the proposed commercial marina on Rose Bay is of usually wide public significance.*

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## Rose Bay marina (cont)

- Harbour Regional Environmental Plan applied and emphasised Sydney Harbour as natural and public asset, and need for public to prevail over private when change to foreshores
- Considered at length visual impacts and evidence and found would diminish views because of size and scale, and impact on panoramic views of Sydney Harbour
- Found that this breached Harbour REP and not in public interest
- Impacts on public access not such to warrant refusal

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## Rose Bay marina (cont)

- Found equitable use, ecological and boat storage facilities not sufficient to warrant refusal
- Lighting, parking and noise impacts could be conditioned
- Was increased navigational risk and conflict between large and smaller craft users that required new Plan of Management for area

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## Burraneer marina- Royal Motor Yacht Club v Sutherland SC

- Developer appeal against refusal of new 74 berth floating pontoon marina (was 57 berth marina in the same spot)
- Commissioner Hussey refused appeal
- Found excessive size resulted in negative visual impacts due to size of Gunnamatta Bay
- Also found negative impact on navigability of waterway
- Concerned about impact of marina on coastal environment particularly if existing marina damaging Bay

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## Burraneer marina (cont)

- Found inadequate modelling of impacts on the Bay was a problem and applied the precautionary principle.
- Also considered problems because of rough weather and needing cautious approach to berths on "weather" side
- Had indicated smaller marina may be acceptable but not before the Court.

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## Roseville marina –Roseville Bridge marina v Ku-ring-gai Council

- Developer appeal against Council refusal regarding rebuilding of 66 berth marina with total of 62 berths
- Court upheld appeal.
- Commissioner Bly found most objections related to traffic, noise, pedestrian access and visual impacts.
- Consent orders agreed when developer provided further information to Council. Additional conditions relating to traffic and parking imposed by Court.
- Found noise, visual impacts and foreshore access insufficient to refuse appeal.

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## Conclusions

- Increasingly marinas will be considered under Part 3A
- Court decision shows that impacts on amenity and character of areas are important considerations
- Courts are also concerned about environmental impacts of marinas and will apply the precautionary principle to any marina development.

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