

EDO BULLETIN

Jan-Mar 2010

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EDO chairs forum on population growth

Two major community organised forums on growth were held in Brisbane and Nambour on Saturday 13th March and Sunday 14th March 2010 respectively. These events were prologues to the Premier's forum on growth that is organised for 30 and 31 March. EDO Solicitor Larissa Waters contributed by chairing the session at Nambour which was organised by the Sunshine Coast Environment Council. The community resolutions of that forum were threefold:

- 1.The Sunshine Coast cannot sustain continued population growth. We need to move towards stabilising our population.
- 2.The State Government must remove the arbitrary and mandatory population and dwelling targets from the SEQ Regional Plan.
- 3.The Federal Government must develop a sustainable population policy for Australia.

For more information about the forum and for copies of the compelling presentations by politicians, authors and activists see www.scec.org.au/index.php?option=com_content&task=view&id=399&Itemid=115

To contribute to the Premier's forum see "Opportunities to Comment" on page 6 of this bulletin.

Paradise Dam case - Court reserves decision

In early February, after more than 18 months of preparation by EDO solicitors and Barristers, hundreds of hours of volunteer legal work and fundraising and four weeks in the Federal Court of Australia, Wide Bay Burnett Conservation Council and Burnett Water made their final arguments to the Court.



EDO's Jo Bragg (centre) with WBBCC members

In closing, WBBCC argued that even though there was no uncontested evidence of harm to the lungfish, an argument pursued by Burnett Water, Burnett Water was still in breach of condition 3 of its federal environment approval by constructing the entrance to the downstream fishway at a level that did not maximise the opportunities for lungfish passage and for simply not operating the upstream fishway.

Justice Logan has reserved his decision.

For more information contact Jo Bragg at EDO Qld or Roger Currie of WBBCC

Victory for environmental advocacy - 'Gunns 20' case settles after 5 years

In a clear victory for the four remaining environmental activists and groups concerned, on the eve of trial, Gunns agreed to pay the four remaining defendants \$155,088 to drop the case. This meant that the demand for compensation in respect of the alleged activities, and any legal costs incurred by Gunns were no longer at issue. As part of the settlement, the defendants are not precluded from undertaking protests in the future.

Readers will recall that Gunns Ltd commenced legal proceedings in the Victorian Supreme Court on 13 December 2004, against seventeen individuals and three environmental groups, seeking \$6.4 million in damages based on alleged unlawful lobbying of shareholders and customers, disruption of logging operations and publication of various media statements. Since the proceedings were started the number of defendants has been reduced to four. See www.gunns20.org for more information

Sustainable Planning Act - Key changes for public interest litigants

- Don't forget to be familiar with the Statutory Guidelines made under the new Planning Act. They are keys to the implementation of the Act. Statutory Guideline 1/09, for example, explains the process for making and amending planning scheme instruments: www.dip.qld.gov.au/policies/statutory-guidelines-for-planning.html
- Court filing fees have increased with the introduction of SPA. EDO has raised with the Court the impact of the fee change on public interest environmental litigants. The fee increase is not likely to be felt immediately. Where an appeal is brought under the *Integrated Planning Act*, for development applications lodged before 18 December 2009, the old fee structure applies. www.courts.qld.gov.au/105.htm#PlanningAndEnvironment
- The test for whether a change to an application is minor is now found in the *Sustainable Planning*

Act, section 350. The new test applies to all appeals, even those started under the *Integrated Planning Act*. In effect, a minor change is one that does not result in a substantially different application. It removes any reference to whether a person, who did not otherwise make a submission on an impact assessable application, would have made a properly made submission had they known about the change. Statutory Guideline 6/09 provides guidance on what a "substantially different" application might be - but this guideline is not exhaustive.

- The Court's power to excuse non-compliance with a provision of the planning laws has been widened and, expressly extends the power to fix development applications that were not properly made or have lapsed. Unlike the new test for minor change this power only applies to appeals commenced under SPA.

Supreme Court rejects challenge to Lower Balonne ROP

In 2007 a group of landowners challenged the decision of the Department of Natural Resources and Water about water entitlements in the Lower Balonne area after the draft resource operations plan for the region reduced their entitlements. On 3 March 2010 the Supreme Court however dismissed the application as the landowner did not sufficiently prove a failure to take into account relevant material or information which might have led to a different decision. As a result of this decision, a resources operations plan, which has the purpose of defining water allocations, trading and operating rules and water monitoring for the Lower Balonne may now be finalised by the State Government. Read the decision here: [Munya Lake Pty Ltd & Ors v The Chief Executive, The Department of Natural Resources and Water \[2010\] QSC 58](#)

North Queensland property developer fined \$65,000

PGP Developments has been ordered to pay \$65,000 for failing to comply with federal environmental requirements over a residential development near Bowen.

The Federal Court ordered the company to pay a \$40,000 civil penalty and \$25,000 in costs after the Federal Government argued that the developer failed to build adequate sediment control ponds in relation to the Whitsunday Shores Development.

Read the decision here: [Minister for the Environment, Heritage and the Arts v PGP Developments Pty Limited \[2010\] FCA 58](#)

STATE LAW REFORM SUBMISSIONS

Strategic Cropping Land

In March EDO prepared a joint submission in response to the Department of Infrastructure and Planning's discussion paper on the policy and planning framework for conserving and managing Queensland's strategic cropping land.

The discussion paper is a first public step by the Government to recognise the need for law and policy reforms to protect food producing lands from competing land uses, such as extractive industries and urban expansion. Our submission emphasised:

- The importance of Queensland's cropping lands goes beyond traditional economic accounting. It extends across social and environment factors, particularly food security.
- Food production occurs all across Queensland on rural, peri-urban and urban lands, on small, medium and large parcels. The definition of cropping, and the criteria for assessing the value of different cropping resources, should reflect this. Strategic cropping land should not be limited to dryland or large-scale irrigated agricultural schemes that produce goods only for export.
- Some land uses, like biofuel production, carbon plantations or grain for input into feedlots, also alienate land from food production. These uses should be avoided on the best cropping lands.
- In order to give effect to the policy to protect cropping lands from competing land uses that will permanently alienate its food producing capacities, two statutory instruments are needed: a State planning instrument to guide development assessment decisions for projects assessed under the *Sustainable Planning Act 2009* and, an Environmental Protection Policy (EPP) to guide development assessment decisions for projects assessed under Queensland resource legislation. The EPP should give DERM powers to refuse an application for an environmental authority if the project would permanently alienate the food producing capacity of the relevant land.
- Significant reforms to *State Development Act* are needed to increase its transparency and accountability so it cannot gazump efforts to

protect cropping lands. One change needed is that if the Coordinator General declared a project a significant project, DERM must retain its concurrence powers to refuse an application for an environmental authority if the project would permanently alienate the food producing capacity of the relevant land.

- A moratorium on new mining, oil/gas leases and licences must be declared until such a time as the policy and planning framework to protect Queensland cropping land is in place.

In terms of proposed assessment criteria we recommended that:

- The assessment criteria for mining and oil/gas projects should be the same;
- The final planning framework must provide for buffer zones around best cropping lands and extend to protect the underground and surface waters on which those lands depends. As an example, storage ponds for wastewater from coal seam gas production should be prohibited on and around good quality agricultural land;
- There should be no loopholes in the final planning framework that would allow a project to avoid assessment against the relevant criteria, even a project that is said to be "in the overwhelming public interest";
- Rehabilitation of cropping land should not be an option. There is no objective and independent evidence that sterilization of cropping land can be reversed in human timeframes, given a range of realities including, the complex ecology of good fertile soil; and
- Offsetting should be avoided.

A copy of this submission is available here:
www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm

EDO invites your feedback on all our submissions. To provide feedback, or to contribute to current or future law reform projects, please contact EDO Qld on (07) 3211 4466 or email edoqld@edo.org.au or EDO-NQ on (07) 4031 4766 or email adminnq@edo.org.au.

NATIONAL LAW REFORM SUBMISSIONS

On 28 January the Australian Network of Environmental Defender's Offices (ANEDO) made a submission on the Discussion Paper 4 – Treatment of new waste coal mine gas power generation in the RET *and Discussion Paper 5 – the treatment of 'Solar Credits' Renewable Energy Certificates under the RET.*

Copies of all national law reform submissions are available from www.edo.org.au/policy/policy.html

COMMUNITY EDUCATION

EDO Qld was extremely active at the Woodford Folk Festival over the new-year, with Jo Bragg participating in the Big Green Debate (Jo teamed up with Dr Wendy Sarkissian and Prof. Ian Lowe to remind us that "The media can't be trusted") and, jointly presenting a forum titled 'Litigating for 'Ol Lungy' with Wide Bay Burnett Conservation Council.

A special thank you to Alan Chenoweth, long-time Management Committee member of EDO Qld, for coordinating the donations and membership drive at those events!

In February, EDO Qld presented a successful half-day workshop on recent changes to the Queensland planning laws to members of the Gold Coast and Hinterland Environment Council (GECKO).

In early March, EDO-NQ Solicitor Patrick Vuleta presented a successful workshop to our northern Queensland members on the Vegetation Management Act.

If you'd like a workshop to be held in your area on environmental law including an update on the Sustainable Planning Act, contact EDO Qld or EDO

QLD LAW AND POLICY WATCH JAN - MAR 2010

Planning and Development

- On 5 March 2010 the State Government announced that a new regional plan will be developed for the burgeoning growth area of the Whitsunday Hinterland and Mackay region. The Whitsunday Hinterland and Mackay (WHAM) regional plan will be overseen seen by Minister for Infrastructure and Planning Stirling Hinchliffe and is expected to plan growth until 2031. It will seek to manage population growth occurring in the region, protect unique environmental values such as the Great Barrier Reef, and cater for the different requirements of productive agricultural, fishing and mining sectors located within the region. According to member for Whitsunday Jan Jarratt, consultation will occur with communities from Bowen to St Lawrence and west to Clermont. It is also expected that a State Planning Regulatory Provision (SPRP) will be released in conjunction with the draft regional plan in late 2010.
- The Queensland Government has released a new version of the sustainability declaration. The sustainability declaration requires sellers to complete a declaration prior to marketing a house, townhouse or unit for sale. Access the new version here: www.dip.qld.gov.au/sustainable-housing/sustainability-declaration.html.
- The following master plan areas have been declared under the *Sustainable Planning Act*: Caloundra South; Coomera Town Centre; Maroochydoore; and Palmview. Draft structure plans for these areas will be made available for public comment in due course. The draft structure plan for Palmview is available for comment now.
- Sunshine Coast Regional Council has adopted a temporary local planning instrument to allow 'community residence' (hospice) to provide palliative care in the residential and rural precincts www.sunshinecoast.qld.gov.au/sitePage.cfm?code=temp-lpi
- Department of Mines and Energy has issued a pipeline licence to Arrow Energy Ltd to transport natural gas from coal seam gas fields in the Surat

Basin to the planned Liquefied Natural Gas (LNG) Plant at Fishermans Landing in Gladstone.

- Housing regulations now require all houses, townhouses, units and major renovations in Queensland to achieve a minimum 5 stars (out of 10) energy equivalence rating. Visit www.dip.qld.gov.au/5starenergy and Queensland Development Code www.dip.qld.gov.au/resources/laws/queensland-development-code/current-parts/mp4-1-sustainable-buildings.pdf

Environmental Protection

- Statewide Landcover and Trees Study (SLATS) data for 2007-8 is now available. While this period saw the lowest annual rate of clearing since the study began in 1988, it reported that 123,000 hectares was cleared during 2007-8. Whilst the majority of vegetation clearing undertaken is lawful, it is estimated that 12,500 hectares per year is unexplained www.derm.qld.gov.au/slats/report.html
- The State Environment Department has responded to an independent review into water quality in the Fitzroy River that was in response to the discharge of mine affected floodwater from a coal mine near Emerald in 2008. DERM support, or support in principle, all the independent recommendations. As a consequence new wastewater discharge management and monitoring requirements for coal mines in the Fitzroy River Basin will be introduced. www.fitzroyriver.qld.gov.au/hartreport.html

Vegetation Management

- On 2 February 2010, the Queensland Government protected a stand of wetlands located forty eight kilometres south of Townsville, on Goodsall Road in Cungulla. The wetlands have been included within the Bowling Green Bay National Park.
- Amendments introduced into Parliament on 9 March 2010 propose changes to the *Vegetation Management Act* that will exclude its application to clearing of vegetation within protected areas that are managed in accordance with Aboriginal and Torres Strait Island traditions under the *Nature Conservation Act*.

Water Management

- The *Water Resources Plan* for the Whitsundays came into force on 26 February 2010.
- The Minister's announcement in late February to prepare a draft water resource plan for the Wet Tropics coincides with the declaration of a moratorium on new licence applications to take water and to construct new water infrastructure in the Wet Tropics, which was introduced by the State government on 18 January 2010. Under the moratorium existing licence holders are not precluded from accessing water and are allowed to carry out construction of existing works in accordance with existing water licences. For further information on the proposed draft water resource plan and moratorium visit www.derm.qld.gov.au/wrp/wet_tropics.html. Public comments on the draft WRP are invited until 30 April 2010.
- A new definition of 'watercourse' is being proposed. At present a watercourse is defined as the bed and banks of a river, creek or other stream. Under the proposed amendments to the *Water Act 2000* the lateral extent of a watercourse will be limited to the outer banks which is where the channel meets any adjoining floodplain or (in the absence of an adjoining floodplain) where scour marks or depositional features indicate the highest elevation to which historic flows have reached.

Climate Change

- The Queensland Department of Clean Energy has developed a 'Queensland Wind Map' to identify development sites in Queensland that could be utilised for renewable energy. See www.cleanenergy.qld.gov.au/queensland_wind_map.cfm

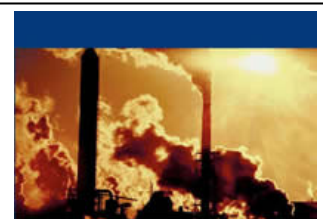
FEDERAL LAW AND POLICY WATCH JAN - MAR 2010

- In December last year, following a change to the Convention on Migratory Species, an international conservation agreement to which Australia is a party, the longfin mako, shortfin mako and porbeagle sharks were listed as migratory species under the *Environment Protection Biodiversity Conservation Act 1999*. The listing took effect on 29 January 2010. On 25 February 2010 the Federal Environment Minister introduced into Parliament legislative amendments to allow recreational fishing of mako and porbeagle sharks to continue on the basis that there was a lack of evidence to show Australian populations are under the same threats as other populations. www.environment.gov.au/coasts/species/sharks/publications/fs-three-sharks/index.html
- Federal Environment Department has released Significant Impact Guidelines for the endangered Southern Cassowary. This policy document provides guidance on what actions may have a significant impact on the species. www.environment.gov.au/epbc/publications/pubs/casuaris-casuaris-johnsonii.pdf
- On 9 February 2010 the plant species, *Lasiopetalum proston*, located in the Speedwell Range north-west of Murgon, South Burnett has been elevated to the status of critically endangered under the *Environment Protection Biodiversity Conservation Act 1999* <http://scaleplus.law.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/all%5Cwhatsnew/4A9B9CF55D2283FACA2576C5007D0C74?OpenDocument>
- On 12 February 2010 the Environment Minister approved the northern pipeline interconnector, a pipeline running between Landers Shute and Noosa, which will draw water from the Mary River. www.environment.gov.au/epbc/notices/assessments/2007/3686/index.html
- On 26 February 2010 the Federal Government announced proposal to vary the Renewable Energy Target scheme to distinguish between small and large-scale renewable energy projects. It is proposed from 1 January 2011 to fix a price of \$40 per megawatt hour of electricity for homeowners who take action to reduce emissions. <http://www.orer.gov.au/>

DOES ENVIRONMENTAL LAW WORK? New book available online

EDO welcomes the release of Dr Chris McGrath's book '*Does environmental law work? How to evaluate the effectiveness of an environmental legal system*'. Based on PhD work completed by Chris it looks into the effectiveness of laws which protect our environment. The complex issue of climate change is discussed as well as how the pressure-state-response method of State of the Environment Reporting has been utilised in reference to the Great Barrier Reef.

The book may be downloaded free of charge from <http://www.envlaw.com.au/delw.pdf>. Or can be purchased online. EDO congratulates Chris for this fantastic achievement.



Chris McGrath

Does environmental
law work?

How to evaluate the effectiveness of an environmental
legal system

LAMBERT

OPPORTUNITIES TO COMMENT

- Feedback is sought in relation to the Tropical Paradise Resort project, a themed entertainment and tourist precinct located 18 kilometres south of Cairns. Submissions close on **29 March 2010**. www.dip.qld.gov.au/tropicalparadiseresort
- Have your say on how growth should be managed in south east Queensland. Visit <http://growthsummit.premiers.qld.gov.au/get-involved.aspx> to find out how you can best participate in the Queensland Growth Management Summit on **March 30 and 31 2010** in Brisbane.
- Public submissions on the draft *Australia's Native Vegetation Framework* developed by the Natural Resource Management Ministerial Council (NRMMC) are invited until **31 March 2010** www.environment.gov.au/land/vegetation/review/index.html
- Have your say on the draft Wide Bay Burnett State Planning Regulatory Provisions by **31 March 2010** www.dip.qld.gov.au/regional-planning/draft-state-regulatory-provisions.html
- Public comment is invited in relation to Sunshine Coast Regional Council's proposed Structure Plan for the Palmview Master Plan Area. The structure plan will provide the planning framework for this Greenfield site that will accommodate 14,000 people. Made under the *Sustainable Planning Act* it will identify future land uses, and will set out levels of assessment, overriding the local government planning schemes that currently apply. Submissions close **19 April 2010**. Visit: www.sunshinecoast.qld.gov.au/sitePage.cfm?code=pv-struct-plan
- Written submissions in relation to the proposed Queensland Curtis LNG Project are invited until **31 March 2010**.
- Public comment is being sought under **30 April 2010** on the draft Water Resources Plan for the Wet Tropics region. www.derm.qld.gov.au/wrp/wet_tropics.html
- Following public notification in October and November 2009 the Brisbane City Council has released a revised version of the draft Milton Station Neighbourhood Plan. As the changes were significant Council has invited a further public consultation until **30 April 2010**.

REPORTS RELEASED

- Federal Environment Department has released the National Koala Conservation and Management Strategy 2009-2014. It is available here www.environment.gov.au/biodiversity/publications/koala-strategy/index.html
- The Australian Marine Safety Authority (AMSA) has released the report of the Incident Analysis Team from the crash of the *Pacific Adventurer* off the coast of Queensland in March 2009. The report can be found here: www.amsa.gov.au/Marine_Environment_Protection/National_plan/Incident_and_Exercise_Reports
- Department of Climate Change has released a summary of the greenhouse gas emissions reported under the *National Greenhouse and Energy Report Act* for the 2008-09 threshold period. View the emissions results here: <http://www.climatechange.gov.au/government/initiatives/national-greenhouse-energy-reporting/~media/publications/greenhouse-report/NGER-data-pdf.ashx>

EDO NEWS

Good bye Amy, Bon voyage Scott

February & March were months of goodbyes for EDO Qld. After nearly two years with the team, Legal and Admin Assistant Amy Thompson took a position with the Litigation Unit at the Department of Environment and Resource Management. Good luck Amy! On 19 March we said bon voyage to EDO lawyer Scott Sellwood. Scott joined Jo, Larissa, Anita, Bron and Amy in August 2008. We wish Scott all the best in the future, and look forward to postcards of his adventures.

EDO JOBS Acting Scientific Officer, EDO NSW

The EDO is looking to employ a scientist with 5 or more years of professional experience to fill the position of Scientific Director, based in the Sydney CBD office. Applicants should have an interest in a wide range of scientific issues and the environmental impact assessment process. For a full position description, please see www.edo.org.au/edonsw/site/jobs.php

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