

**ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.
ENVIRONMENTAL DEFENDERS OFFICE OF NORTHERN QUEENSLAND INC.**

BULLETIN

July 2006

What's in this Bulletin?

This Bulletin is packed with news on EDO's **law reform** work including disappointing watering down of expected wild river protection, and EDO's submission on the vegetation clearing rules. We update you on our recent **Court cases** to protect koala habitat and the visual integrity of Cairns hillslopes, and report on the successful launch of our **Community Litigants Handbook**. In **useful tips** we note a new environmental law website and revised federal Administrative Guidelines on Significance, and in **EDO news** EDO-NQ seeks a solicitor for 1 year, and there is good news for EDO Victoria's funding and EDO-NSW's expansion! Our July Special Bulletin lists current **opportunities to comment** and host of **environmental legal changes**.

LAW REFORM NEWS

Wild Rivers update – six rivers to be declared but promised protection watered down

During July EDO Qld continued to provide urgent legal support to The Wilderness Society (TWS) analysing various government proposals, drafting responses and advising TWS during negotiations on government proposals to water down the protection to be given to Wild Rivers.

However, despite conservation sector advocacy, the government bowed to more powerful interest groups and wound back limitations on mining, agriculture and local government activities in wild river areas:

- extraction of quarry material for local government roads will now be permitted from the actual wild river where there is no other viable source;
- mining *under* a wild river will now be allowed subject to an EIS, and mining projects of state significance can occur in watercourses in a wild river area subject to an EIS;
- some urban Environmentally Relevant Activities (ERAs) such as motor vehicle workshops and most Level 2 ERAs will now be allowed in the high preservation area;
- regrowth vegetation clearing will now be allowed in high preservation areas;
- fodder crops can now be established without assessment in a preservation area; and
- new broader mapping scales for wild river catchments will mean smaller watercourses receive lesser protection, because in-stream activities otherwise prohibited (such as in-stream quarrying and mining) will be permitted in those numerous smaller watercourses not shown on the broad scale wild river map.



Gregory River (photo courtesy TWS)

This wind-back on earlier proposed wild river protection reduces the positive impact of the government's agreement to declare six wild rivers: the rivers of Fraser and Hinchinbrook islands and four Gulf rivers, the Gregory and Staaten Rivers, Settlement Creek and the streams of Morning Inlet. Once formally declared as wild rivers, these six will be protected from various activities including new dams and weirs, have water extraction capped at less than 1% of the mean annual flow of the catchment, and benefit from a set back of 100m from river banks for high-impact mining activities. The final declarations for the six wild rivers will be available at www.nrm.qld.gov.au/wildrivers/index.html.

EDO supports wild river declarations but is extremely disappointed that the government is only partly protecting these wild rivers. And the declarations will not be effective without an accompanying management plan, funding of \$2 million dollars each river and properly addressing concerns with indigenous and community consultation on the wild river declarations.

For more information about EDO Qld's work on Wild Rivers contact Larissa Waters at EDO Qld.

EDO-Qld coordinates environment sector submissions on new vegetation clearing rules

In July 2006 EDO Qld drafted submissions on behalf of WWF Australia, The Wilderness Society and Queensland Conservation Council on the draft vegetation clearing codes and concurrence policies, used by the Department of Natural Resources, Mines and Water when assessing vegetation clearing applications. The main points of the submissions were:

- *Support* for the imposition of new requirements on extractive industries and fodder harvesting to protect threatened species habitat, and new requirements to protect ecosystems from becoming more threatened as a result of extractive industries, state infrastructure and built infrastructure;
- *Support* for special protection for significant wetlands, and for limiting all clearing “to the extent necessary” to stop unnecessary clearing;
- *Opposition* to allowing fodder to be harvested using a chain linked between two bulldozers, which too closely resembles broadscale clearing, and to allowing aerial herbicide spraying for weed and pest management as it will harm non-target species;
- *Opposition* to allowing areas of non-remnant vegetation to be protected as ‘offsets’ enabling clearing of threatened species habitat and endangered regional ecosystems which would otherwise be protected; and
- *Opposition* to exempting small-scale clearing in threatened species habitat and endangered regional ecosystems from assessment against the rules in the vegetation clearing codes.

For a copy of the submissions contact Larissa Waters at EDO Qld on edoqld@edo.org.au.

COURT CASE NEWS

Case update from EDO-Qld

Koala habitat cases – *Wildlife Preservation Society Qld Bayside Branch Inc. v Redland Shire Council and Heritage Properties Pty Ltd* (“401 Redland Bay Rd case”), and *Gibbards case*

Since we last reported on the 401 Redland Bay Rd case to protect koala habitat in the Redlands, EDO has viewed the parties’ documents, is settling a list of issues for the experts, and has inspected the 67 hectare bushland site. WPSQ Bayside is being assisted by EDO Qld as solicitors, barrister Steve Keliher, town planner Peter Syson and ecologist Lynn Roberts. Major issues in the case include the impact of the development on koala habitat and the appropriateness of a Residential A development on Rural/Non Urban land. The hearing is allocated in the November 2006 pool in the Brisbane Planning and Environment Court.

The second koala habitat case which EDO had been working on, *Gibbards v Redland Shire Council and Carndale Pty Ltd & Ors*, has now ended as neighbour appellant Mr Gibbards withdrew his appeal. This land is key koala habitat outside the Urban Footprint so the community could reasonably expect the land to be safe from large scale industrial development. Yet Redland Shire Council approved the large scale industrial development and then Planning Minister Boyle failed to use her “call-in” powers to stop the development. Environment groups are spread too thinly to run and win every deserving town planning appeal. It’s not good enough that the Environment Minister failed to call-in and reject this inappropriately sited industrial development proposal. *For more information about EDO Qld’s cases contact Jo Bragg at EDO Qld.*

Case update from EDO- North Qld

False Cape appeal lodged – *CAFNEC & Save our Slopes v Reef Cove Resort P/L and Cairns City Council*

On 2 June 2006, His Honour Judge White struck out part of the case of CAFNEC and Save our Slopes. Those grounds relating to various errors of law and unreasonableness of decision of the Cairns City Council failing to refuse the development approval because of the conflicts with the Hillslopes Development Control Plan (Hillslopes DCP), and because there were no good planning grounds for allowing the approval despite the conflict. Judge White found that the Special Facilities Zoning allowed as of right uses for residential development and contemplated subdivision of the land and therefore constituted good planning grounds for approving the development despite the conflicts with the Hillslopes DCP and Strategic Plan. On this basis he struck out the grounds of the case that referred to good planning. His Honour also found that the matter of

whether the sufficient planning grounds advocated by Reef Cove justified the approval despite the conflicts with the Hillslope DCP was a matter for Council and not able to be judicially reviewed. He also rejected the use of evidence by CAFNEC and SOS in these proceedings.

Save our Slopes have appealed this decision to the Court of Appeal on the basis that His Honour was in error by applying the wrong test on a strike out application and in considering what constituted sufficient planning grounds. Save our Slopes have filed their submission in support of the appeal. The appeal is likely to come before the Court of Appeal in Brisbane in October or November 2006.

Lavis v Mareeba Shire Council & Ors

The EDO-NQ has recently commenced acting for some farmers and the Mitchell River Watershed Management Group who are Co-Respondents to an appeal before the Planning and Environment Court in Cairns. The appeal is by a developer who was refused development consent for the building of a grease trap waste management system near Dimbulah. The residents and Mitchell River Watershed Management Group are concerned primarily about the effect of the grease trap waste on the water quality of nearby watercourses that flow into the Mitchell River and adjoining farmland.

For more information about EDO-NQ cases contact us on (07) 4031 4766 or edonq@edo.org.au.

Other EDO cases - EDO-NSW and HSI win Japanese whaling case!

See EDO's special EDO Alert! at www.edo.org.au/edoqld/edoqld/new/Alert%20Whales%20July%202006.pdf for more details of this important win, which enables the Humane Society International Inc (HSI) to serve proceedings on the Japanese whaling company seeking an injunction to stop their illegal whaling!

COMMUNITY EDUCATION & EVENTS

Community Litigants Handbook launched - get your copy now!

The launch of the Community Litigants Handbook at Brisbane's Banco Court on Tuesday 25 July 2006 was a huge success. More than 50 EDO members, judges, government officers and environmental lawyers attended to hear the Attorney-General formally launch the book, and heard inspiring speeches from EDO Qld's Chair Lesley King, Principal Solicitor Jo Bragg and EDO Project Officer and author of the book Anita O'Hart.

EDO hopes that the handbook will help members of the community to have their voice heard in the Planning and Environment use the law to protect the environment and help to alleviate some of the difficulties the community faces in bringing court action. For just \$30, it's a bargain!



From left: EDO Project Officer and Handbook Author Anita O'Hart, Judge Michael Rackemann, Attorney-General Linda Lavarch, EDO Principal Solicitor Jo Bragg and Judge Alan Wilson at the July Launch.

To order your copy of the handbook (\$30) call Bronwyn at EDO-Qld on 3211 4466 or Rachele at EDO-NQ on 4031 4766 or use the order form on our website at www.edo.org.au/edoqld/home.html.

EDO-NQ to launch Handbook and host biodiversity talk by Dr Krishna Oli on Tuesday 15 August 2006

On Tuesday 15 August 2006 EDO-NQ will host a talk from Dr Krishna Oli on conservation struggles and biodiversity in Nepal, and also launch the Community Litigants Handbook (copies will be available).

Dr Oli is a lawyer who has worked for many years in support of indigenous people's and local community groups in the Himalayas region. He is currently the Regional Coordinator for Culture, Equity, Gender and Governance Programme at Nepal based International Centre for Integrated Mountain Development (ICIMOD: see www.icimod.org). To attend the launch and hear Dr Oli, come to the Cairns City Library meeting room, Abbott Street, Cairns at 6pm on Tuesday 15 August 2006.

Recent EDO-NQ workshops

EDO-NQ in conjunction with the Cape York Land Council has recently run a series of workshops at Cooktown, Laura and Coen to help Traditional Owners understand and provide comments on the draft Cook Shire Planning Scheme. The Cook Shire comprises most of Cape York, and the Shire has a population that is over 50% indigenous. The EDO-NQ also assisted Cape York Land Council in providing a detailed submission on the draft Plan.

On 27 July 2006, EDO-NQ in conjunction with Earthwatch Institute and the Network for Sustainable and Diversified Agriculture presented a morning workshop on "Rainforest as a Resource" at Malanda on the Tablelands. The workshop explored the topics of vegetation clearing, forestry, seed collecting, native title and biodiscovery and was attended by approximately 25 people.

USEFUL TIPS

New environmental law website

Readers interested in finding out about key cases in environmental law can find information on a new website authored by well known public interest environmental Brisbane barrister Chris McGrath. The website provides simple explanations and case studies of environmental litigation in Queensland and Australia, including the very useful publication by Chris McGrath *Synopsis of the Queensland Environmental Legal System*. Check it out at www.envlaw.com.au/index.html!

Updated EPBC Act Administrative Guidelines on Significance

Confused by when an action is likely to have a "significant" impact on a matter of national environmental significance, requiring federal government approval to proceed? Have a look at the updated Administrative Guidelines on Significance available from www.deh.gov.au/epbc/publications/nes-guidelines.html and www.deh.gov.au/epbc/publications/commonwealth-guidelines.html (for Commonwealth land or actions). The Department has updated their previous guidelines as a result of the Nathan Dam appeal requiring consideration of indirect impacts. Sadly there's no mention of considering greenhouse gas emissions....

EDO NEWS

Solicitor needed for 1 year at EDO-NQ

The EDO-NQ is seeking a lawyer to work with us for 12 months (September 2006 to September 2007) to fill a maternity leave position. Experience in the field of litigation and environmental law is preferable but not essential. For more a copy of the position description and selection criteria, contact Kirsty Ruddock, Principal Solicitor at EDO-NQ on 4031 4766 or by email at edonq@edo.org.au. Applications close soon so be quick!

EDO-NSW opens new Northern Rivers branch office

On Saturday 15 July 2006 EDO-NSW celebrated the opening of its new Northern Rivers office with an official launch by Justice Brian Preston, Chief Judge of the NSW Land and Environment Court, followed by a free half-day community workshop about conservation on private land. Both the launch and the workshop were well attended and the EDO Northern Rivers looks forward to engaging further with the region and helping residents to achieve positive outcomes for the local environment.

Funding success for EDO Victoria!

EDO Victoria has been successful in gaining extra funding from Legal Aid Victoria under the 'Gateways to Civil Justice' initiative announced in last year's state budget. The extra funds will be used to add another lawyer to the EDO Victoria team, and to improve access to the EDO for rural and regional communities.

To subscribe free to the monthly joint EDO-Qld and EDO-NQ Bulletin, email edoqld@edo.org.au or edonq@edo.org.au

To subscribe free to the EDO NSW Bulletin, (covering Cth and NSW issues) please send an email to edonsw@edo.org.au

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