

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

BULLETIN

December 2005

EDO-QLD and EDO-NQ wish all readers an ecologically sustainable
and restful Christmas and New Year!

What's in this Bulletin?

This Bulletin notes EDO's **court case news** including EDO-NQ's successful costs indemnity decision on Hinchinbrook and a new case about False Cape Cairns, plus EDO-NSW's cases on elephants and the outrageous NSW special legislation to stymie the High Court challenge on water planning. We update you on our recent **law reform** activities involving Wild Rivers and vegetation – with bad news that rainforest logging on private land is to continue in Qld for now - and mention our recent **community education** events including the Community Litigant's workshops. We also refer you to a **useful website** on campaigning strategies from the Change Agency. Please note the EDOs close on 23 December 2005 and reopen on 9 January 2006. Merry Christmas readers!

COURT CASE NEWS

Case update from EDO-North Qld

1. Hinchinbrook Breakwaters – Alliance to Save Hinchinbrook (ASH) v Environmental Protection Agency

As mentioned in last month's Bulletin, EDO-NQ is acting for ASH who are seeking judicial review of the EPA's decision to approve the building of 2 rockwall breakwaters into the Hinchinbrook Channel at Oyster Point. The case will be heard in the Supreme Court in Cairns on the 9th and 10th February 2006.

On 7 November 2005 EDO-NQ made an interim application that ASH bear only their own legal costs of the matter under a special section in the *Judicial Review Act 1991*, because it was a public interest case with reasonable grounds of success. On 1 December 2005 His Honour Justice Jones decided in favour of ASH and ordered that ASH bear only their own legal costs in the case, regardless of the outcome. His Honour found the case was in the public interest because the breakwaters may have a drastic impact on the natural environment of the area, and noted that ASH did not stand to financially gain from the proceedings.

This decision sets a good precedent for public interest environmental judicial review cases in state courts, and means that the merits of the case can now be heard without fear of crippling costs orders, ensuring substantive access to justice for the community.

2. New case – CAFNEC and Save our Slopes v Cairns City Council and Reef Cove Resort Pty Ltd

On 13 December 2005 EDO-NQ lodged an application in the Planning and Environment Court on behalf of the Cairns and Far North Environment Centre (CAFNEC) and Save our Slopes (SOS) against approvals for a 102 lot residential subdivision and resort hotel, townhouses, and resort village infrastructure granted to Reef Cove Resort by the Cairns City Council.

The site at False Cape, east of Cairns, borders two World Heritage areas: the Great Barrier Reef and the Wet Tropics of Queensland. At present it is largely undeveloped and forms part of the green mountainous backdrop to Cairns, but the approvals would see around 1500 people accommodated on

40.6 hectares. CAFNEC and SOS are concerned about the adverse impact on visual amenity and the safety of the development given the site's steep slopes which contain a number of large boulders.

CAFNEC and SOS are seeking declarations from the Court that the approvals granted by Council are invalid, and should have been refused because of significant conflicts with the Hillslopes Development Control Plan and the Strategic Plan of the transitional Cairns Planning Scheme. CAFNEC and SOS will also argue that the Council made an error by regarding itself as bound to approve the application because of previous rezoning of the area to Special Facilities Zoning despite the conflict with the Hillslopes DCP and Planning Scheme. The case comes before the Court again on 6th February 2006.

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

Other EDO's cases

1. Water test case sunk - New South Wales government legislates EDO-NSW out of the High Court!

EDO-NSW, representing the Nature Conservation Council of NSW (NCC), were due to appear in the High Court on 13 December 2005 challenging the validity of the Water Sharing Plan for the Gwydir River. The appeal concerned whether the Plan was invalidated by the NSW Minister for Natural Resources' failure to set aside water for environmental health *before* allocating water for irrigation and other consumptive purposes. The case therefore had potential implications for Queensland and other states' allocation of water for environmental flows in water resource planning.

However, the NSW government decided to legislate EDO-NSW out of the High Court! The *Water Management Amendment Bill 2005* was passed by the NSW Parliament on 1 December 2005. It includes provisions that retrospectively validate any management plans gazetted, and also "clarifies" that water can be committed in ways that are abstract instead of actual, which removes the basis for NCC's case against the Minister.

This is not the first time that the NSW executive has sought to use hurried legislation to overcome or to avoid an unfavorable court decision. In another of EDO-NSW's cases in 2004, the *Filming Approval Act 2004* was passed to provide certainty to the film industry after Lloyd J found that an approval to film in the Grose Wilderness area of the Blue Mountains National Park and World Heritage Area was invalid.

Pushing this Bill through Parliament 2 weeks before the Court is due to hear the appeal is a sad indictment on the NSW government. The High Court has deemed the Gwydir case raises legal issues of merit and sufficient national importance to be considered. The NSW government's amendments undermine the legitimate process of judicial review that was contemplated by Parliament when it enacted the Act with provisions that allowed the public to challenge the validity of management plans.

EDO-NSW was forced to settle the case and filed consent orders on 8 December 2005, including that the NSW Minister pay the NCC's costs in preparing for the scuttled High Court appeal.

For more information about the case contact Ilona Millar at EDO-NSW on ilona.millar@edo.org.au.

2. EDO-NSW unsuccessful AAT elephant importation case

EDO-NSW's appeal on behalf of the International Fund for Animal Welfare, the RSPCA and the Humane Society International against the importation of eight Asian elephants from Thailand to Taronga and Melbourne zoos has been decided. The groups appealed against the federal Environment Minister's decision to import the elephants on the grounds that the zoos cannot meet the biological and behavioural needs of the elephants and there is no conservation benefit to stocking the elephants as it is unlikely that a breeding program would result in elephants being released back to the wild.

The case was heard before the Administrative Appeals Tribunal in Sydney on 26 September 2005, and on 7 December 2005 the Tribunal decided to issue the permits to import the elephants on the condition that the zoos prove they can cater to the biological and behavioural needs of the elephants. However the decision is not a final one as the Tribunal invited the zoos to put on further evidence to be debated in another day of hearing before 16 December 2005. The 7 December 2005 judgement is available from www.aat.gov.au, then follow the links to judgements—environment.

For more information contact Jessica Simpson at EDO NSW on jessica.simpson@nsw.edo.org.au.

LAW REFORM NEWS

First Wild Rivers nominated by Queensland government

Readers will recall from November's Bulletin the work EDO-Qld has been doing with the Wilderness Society (TWS) and the Queensland Conservation Council (QCC) on the Wild Rivers campaign over the past 2 years.

On Friday 2 December 2005 the *Wild Rivers Act 2005* came into legal force, and on Tuesday 6 December 2005 the Queensland government announced its intention to nominate six rivers for protection under the Act. Since the Act itself does not protect any rivers, these nominations are the welcome beginning of the process to safeguard Queensland's remaining free flowing rivers. The six rivers systems nominated for protection comprise four in the Gulf of Carpentaria (Settlement Creek, Mornington Inlet, the Gregory River and the Staaten River) plus the streams of Fraser Island and Hinchinbrook Island.

The draft declaration proposals for those six systems have now been released for public comment, and EDO will continue to work with TWS and QCC to make submissions on the draft declarations.

EDO congratulates the Government on starting with these 6 rivers and looks forward to the declaration of all 19 rivers within this political term as promised by the Premier in the lead up to the 2004 state election.

For more information about the wild rivers campaign see www.wildrivers.org.au.

Vegetation clearing law reform – rainforest logging permitted!

Our last Bulletin outlined EDO-Qld's recent work on the vegetation campaign with The Wilderness Society (TWS) and the Queensland Conservation Council (QCC). EDO-Qld continued that work this month by attending Business Advisory Committee Meetings with DNRM and other stakeholders in relation to the drafting of a new vegetation clearing code for **fodder harvesting**, where EDO-Qld had input in the species, method and amount of fodder which the code will permit.

This month also saw the commencement of the **freehold forestry code** as discussed in last month's Bulletin, however the Queensland government adopted the Code which had been released for public consultation 14 months prior *without including any of the changes agreed on by stakeholder groups* including TWS, the Australian Rainforest Conservation Society, the Qld Timber Board and Agforce! The government's media release commencing the Code leaves open the possibility of future amendments, but to disregard 14 months of stakeholder consultation is extremely unsatisfactory, particularly since the commenced code endorses intensive logging of old growth rainforests and tall eucalypt forests on private lands and will lead to the destruction of threatened species habitat.

For more information on vegetation clearing law reform, contact Larissa Waters of EDO Qld.

COMMUNITY EDUCATION

Successful Community Litigant's workshops in Brisbane and Cairns on 16 November 2005

Our first community litigant's workshops were a huge success! Thanks go to Simon Baltais, Chris McGrath and Steve Keliher for their helpful insight into planning appeals during the Brisbane workshop, to Metro Arts for the venue, and many thanks to Anita O'Hart of EDO-Qld for her work on the draft handbook. Thanks also to Pam Bigelow for speaking at the EDO-NQ workshop. Stay tuned for the release of the user friendly handbook early in the new year and for more community workshops in 2006!

EDO-NQ talks at EDO ACT 10th year Anniversary function

On 1 December 2005 Kirsty Ruddock of EDO-NQ spoke to an audience of 80 people who gathered for the EDO ACT 10th Anniversary Function and fundraiser. Kirsty spoke about the Wildlife Whitsunday case against the Federal Government in relation to the greenhouse gas omissions from new coal mines in the Mackay region. Senator Bob Brown also attended and spoke about the case he is conducting against Forestry Tasmania. His case was heard in the Federal Court in Hobart on 5 December 2005 and tests whether logging in Wielangta area which will threaten listed endangered species is permitted because of the exemption of forestry activities from EPBC Act.

EDO-Qld speaks at Environmental Protection Act forum and QELA seminars

On 1 December 2005 Jo Bragg of EDO-Qld spoke to an audience of more than 100 attendees at a seminar on the *Environmental Protection Act* hosted by the Environment Institute. Jo discussed the importance of community participation in the Act, and advocated for the inclusion of formal objection and appeal rights for the more serious Environmentally Relevant Activities and for better access to information, including that the register of permits be searchable online.

Through her role as seminar sub-committee member of the Queensland Environmental Law Association, Larissa Waters of EDO-Qld organised and chaired a Water Law and Policy seminar in early November, which included speaker Henry Boer from QCC. Larissa also organised a seminar on the new *Wild Rivers Act* in late November which Jo chaired and Larissa Cordner from TWS spoke. Both conservation sector representatives spoke authoritatively and well and we thank them for their contribution!

EDO NEWS

EDO Christmas holidays

The EDO-Qld office will be closed from Thursday 22 December 2005 until Monday 9 January 2006, and EDO-NQ will be closed from Friday 23 December until Monday 9 January 2006. All callers should leave answering machine messages with the relevant EDO and we will respond as soon as possible.

USEFUL TIPS

Campaign Strategy resources – The Change Agency website

The Change Agency has collated materials from its 2006 strategy workshops and made them available on its website, with a new section of the site to collect, share and critique strategising tools. The site includes a manual on "How to Plan a Campaign" and includes links to other useful sites. *For Strategising for Change resources see www.thechangeagency.org/resources_bigpic.htm, and for the Campaign Strategy page see www.thechangeagency.org/strategy.htm.*

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

Environmental Defenders Office (Qld) Inc.

9th Floor, 193 North Quay (corner Herschel St), Brisbane 4000. Ph: (07) 3211 4466, Fax: (07) 3211 4655, e: edogld@edo.org.au

Environmental Defender's Office of Northern Queensland Inc.

1st Floor, 96-98 Lake St, Cairns 4870. Ph: (07) 4031 4766, Fax: (07) 4041 4535, e: edong@edo.org.au

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