

## BULLETIN – August 2002

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### **Salinity Expert Dr John Williams to Speak at EDO Qld Launch of *Freshwater* Theme**

EDO Qld presents a great opportunity to hear one of Australia's foremost salinity experts speak about the "Impacts of Land Clearing on Hydrology and Salinity" and launch our new *Freshwater* theme.

Time / Date **6:45pm Tuesday 10<sup>th</sup> September 2002**

Place **Blake Dawson Waldron Lawyers, Level 36, Riverside Centre, 123 Eagle St, Brisbane**

The Annual General Meeting will be held prior to the lecture at 5:45pm (welcome drinks at 5:15pm).

RSVPs are essential as space is limited! Email [edoqld@edo.org.au](mailto:edoqld@edo.org.au) or call the office on 3210 0275 at your earliest convenience. Members are given priority.

### **Native Title and Planning Law Guest Presentation**

EDO-NQ and JCU Masters student Andrea Olsen, who is currently researching ways in which the Integrated Planning Act 1997 (Qld) can achieve its goals of environmental sustainability without compromising the aspirations of Native Title holders, will present a short talk on the progress of her research to date at the EDO-NQ Annual General Meeting.

Details of the EDO-NQ AGM are as follows:

Time/Date **6pm, Wednesday 18th September 2002**

Place **Tenant's Union of NQ Inc., 208 McLeod Street Cairns.**

Light refreshments will be provided.

### **Fisheries Tribunal Decides Marine Plants Permit Invalid**

On 5 August 2002 the Queensland Fisheries Tribunal upheld an appeal brought by the Hemmant-Tingalpa Action Group, Ms Jane Scherrer and the Wildlife Preservation Society of Queensland Bayside Branch (Qld) Inc. ('WPSQ Bayside') against a Department of Primary Industries ('DPI') decision to grant to Masters Butchers Limited a permit to remove approximately 1.2 hectares of marine plants (mainly saltwater couch) on the proposed Masters Butchers industrial estate as Hemmant. The Tribunal found that the marine plant permit was contrary to the *Fisheries Act 1994* primarily because it failed to identify with certainty and particularity the area from which marine plants were permitted to be removed. The Tribunal also found that the DPI had misconstrued the expressions "marine plant" and "tidal land" as defined in the Act, that this amounted to an error in law and made the decision one which was contrary to the Act. Unfortunately, the Tribunal then decided that the DPI should grant to Masters Butchers a permit to remove marine plants within a clearly defined and certain area.

In making this decision, the Tribunal was of the opinion that, given the significant contamination of some areas of the site and the risk of contaminants leaching into the waterways near the site, the best outcome would be to remediate the land and allow marine plants to regenerate. The Appellants did not have an expert witness to challenge the contamination evidence. The Tribunal concluded that this best outcome of remediation was unlikely and impractical, especially given that the land is privately owned and private economic interests are involved. Furthermore, whilst acknowledging the significance of marine plants to fisheries resources and the importance of marine plant preservation, the Tribunal was not convinced that the risk to fisheries resources from the removal of marine plants from this site was significant.

The Tribunal's decision confirms that a person whose interests are affected by a decision has legal standing to appeal against that decision. Following *Mackay Conservation Group Inc v Chief Executive, Department of Primary Industries* (FT178, 7 April 2000), this newer decision indicates that incorporated environmental groups (but not unincorporated groups) can confidently appeal such decisions to the Fisheries Tribunal. It is also noteworthy that, like the Planning and Environment Court, generally each party pays their own court costs in the Fisheries Tribunal.

The WPSQ Bayside expressed its reservations about the ability of some agencies to act objectively and in the best interest of the community, and is particularly concerned about the amount of marine plant destruction permitted by the

DPI, especially given its misinterpretation of “marine plants”. EDO Qld would like to see all applications and supporting information for fisheries permits publicly available on the DPI website, similar to vegetation clearing permits, so environmental groups can exercise their rights of appeal.

Thanks to Stephen Keliher (barrister) for his relevant and incisive cross-examination, which was praised by the Tribunal. Also special thanks to Pat Dale (ecologist) and Miles Colvin (coastal engineer) who generously gave their time and energy as expert witnesses in our case. EDO Qld also acknowledges the contribution made by other witnesses and the hard work by the community groups who were ably led by Simon Baltais and Ms. Jane Scherrer.

*For more information please contact Jo Bragg at EDO Qld. For a copy of the judgement see [www.fisheriestribunal.org](http://www.fisheriestribunal.org).*

### **Court of Appeal Dismisses Appeal Against Local Vegetation Laws**

*Bone v Mothershaw [2002] QCA 120 Brisbane, 12 April 2002, McPherson and Williams JJA and Byrne J.*

The Queensland Court of Appeal recently upheld the legality of Brisbane City Council Vegetation Protection local laws. Mr Bone had destroyed vegetation on his property in breach of a Vegetation Protection Order (VPO), and later ignored a Notice from the Council requiring him to submit a rehabilitation program to revegetate the area. Mr Bone challenged his conviction and \$20,000 fine for failure to revegetate by challenging the validity of the local laws establishing VPOs and revegetation orders. The Court of Appeal held that the Council did have the power to make local vegetation laws, and that no inconsistency with state vegetation law existed. However, the Court criticised the way in which development rights of property owners were effectively extinguished without compensation. Mr Bone indicated that he would appeal to the High Court – where the question of whether there is any common law right to compensation for government actions that reduce the value of land is likely to be in issue.

*Copies of the Court of Appeal's decision can be obtained from EDO (Qld) or EDO-NQ or from Queensland Courts website at <http://www.courts.qld.gov.au>*

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