



ENVIRONMENTAL DEFENDERS OFFICE
(QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF
NORTHERN QUEENSLAND INC.



BULLETIN – JANUARY 2004

Happy New Year readers!

What's in this Bulletin?

This month, read about the outcome of EDO(Qld)'s two **court cases**, continuing developments on **land clearing policy** in the lead-up to the State election, and the new regional **coastal management plan** for the Wet Tropical Coast of NQ. Don't miss your opportunity to influence water allocation for environmental flows by commenting on the latest Draft **Water Resource Plans**, or to nominate your favourite **natural or cultural heritage place** for inclusion in the new Commonwealth national heritage list. Read about draft **IPA Planning Schemes** being developed for Cairns and other NQ shires and your chance to influence the future character of your locale (think Green Space!). Attend an EDO(Qld)-QELA **seminar** about the new heritage regime and EPBC Act amendments and recent cases on 1 March 2004, help EDO NT find a solicitor and visit **EDO(Qld)'s new office!**

Federal Court success over proposed Nathan Dam!

As most readers would know from our EDO Alert! email, the battle for better environmental assessment of the impacts of the Nathan Dam was won in the Federal Court on Friday 19 December 2003!

EDO (Qld) were the solicitors on the record for successful clients Queensland Conservation Council (QCC) and World Wide Fund for Nature Australia (WWF), as the Court overturned a decision of the Commonwealth Environment and Heritage Minister, Dr David Kemp.

In a landmark decision, Justice Susan Kiefel of the Federal Court held that proper environmental assessment under the EPBC Act meant that the Minister must consider the "whole, cumulated and continuing effect" of a proposed activity, including the impacts of activities of third parties. The assessment of the proposed dam will now be revised and it is likely the Minister will now include consideration of the impacts on migratory species and the Great Barrier Reef from farmers irrigating with water from the dam (and associated pesticide and chemical use).

This ground-breaking case has implications for all environmental assessment under the EPBC Act (and perhaps even other State environmental impact

assessment legislation), with the Minister now required to take a broad approach to adverse environmental impacts of proposed "actions", be they dams or not!

STOP PRESS – the Minister has appealed this decision to the Full Federal Court...

For a copy of the judgment see http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/1463.html, or for more information about the case contact EDO (Qld) on 32 10 0275 or email edoqld@edo.org.au.

Land clearing law reform set to go ahead

On 18 January 2004 Premier Beattie reiterated his commitment to go it alone on land clearing law reforms by paying the full \$150 million compensation package without Commonwealth assistance, and promising that amendments to the clearing laws will be the first legislation introduced by his government if they are re-elected following the 7 February 2004 election. The key elements of Premier Beattie's reforms are a phase out clearing of remnant vegetation by 2006, and immediate protection "of concern" vegetation on freehold land (currently only protected on leasehold land).

In December 2003, EDO(Qld) helped the major groups (QCC, WWF, The Wilderness Society and ACF) compile a list of requirements for legislative change on land clearing and sent this to Premier Beattie and Natural Resources Minister Stephen Robertson, outlining legislative mechanisms which would achieve the Premier's commitments and requesting other needed reforms, including:

- combining the administration of freehold and leasehold clearing and ensuring that public access to information and third party enforcement rights (for unlawful clearing or breaches of permit conditions) apply to leasehold clearing as well as freehold clearing;
- making land clearing applications impact assessable, thus allowing public comment and appeal rights against the grant of permits, without changing the existing criteria against which permits are assessed;
- removing the exemption of urban land from clearing laws, ensuring native vegetation in urban areas is regulated, subject to reasonable "necessary" clearing exceptions; and
- using a permit and Code system to regulate regrowth clearing.

For further information on the proposed land clearing reforms or a copy of the letter sent to Premier Beattie contact Jo Bragg or Larissa Waters at EDO (Qld) on (07) 32 10 0275.

EPA Releases Wet Tropical Coast Regional Coastal Management Plan

North Queensland members may be interested to know that the Environmental Protection Agency has released the Wet Tropical Coast Regional Coastal Management Plan, which will commence on 4 March 2004. This is the third Regional Coastal Management Plan to have been released by the EPA since the State Coastal Management Plan commenced on 27 February 2002. The Wet Tropical Coast Regional Coastal Management Plan aims to provide detailed direction at a regional level for implementation of the policies and principles and achievement of the coastal outcomes set out in the State Coastal Management Plan. The EDO-Qld and the EDO-NQ hope that the commencement of this Plan, combined with the recent amendments to the *Coastal Protection and Management Act 1995*, will contribute to more appropriate management of Queensland's coastal region but do have concerns as to the extent to which this and other Coastal Management Plans will be implemented, particularly by decision makers operating outside the IDAS process.

For more details about the Regional Coastal Management Plan and coastal planning processes generally, contact EDO-NQ.

Springbrook Planning Appeal lost but significant gains for site achieved

Last year EDO (Qld) represented groups GECKO- Gold Coast & Hinterland Environment Council, Friends of Springbrook Alliance and locals Ken and Jeanette O'Shea in this appeal to the Planning and Environment Court. Readers will recall this case challenged the Gold Coast City Council's approval of a recreation facility on cleared land plus the construction of two additional tourist cabins over the existing four cabins in rainforest adjacent to the World Heritage listed rainforest on Springbrook. The cabins were in a designated Nature Conservation Area.

In a disappointing decision delivered on 19 December 2003, Judge Newton found that it was not necessary that the development comply with the implementation criteria of the Springbrook Structure Plan (which said "no building" in nature conservation areas), as long as the broader Objectives of that Plan could be met. Since those Objectives included promoting local tourism, and because the judge accepted the evidence of the developer's ecologists that impacts on the rare and threatened plants and animals would be minimal, the judge dismissed the appeals of GECKO, Friends of Springbrook and the O'Sheas.

However, running the appeal had prompted the developer to change the location of the cabins from deep in the remnant rainforest to existing cleared sites near the edge of the forest. The appeal thus resulted in huge gains for the site, including protection of over 800 of rare and threatened plant species, vast improvement to the existing and proposed wastewater disposal, and a reduction in cabin size.

So while the Court did not allow the appeals, Judge Newton upheld the need for those improvements in the development proposal, and indicated further conditions would need to be imposed to protect threatened plant species before he would approve the development. Appropriate conditions will now need to be negotiated between the parties, and EDO (Qld) will also help the clients try to get stronger planning guidelines in the new draft Local Area Plan for Springbrook, which will regulate development in the area under the new Gold Coast City Council IPA planning scheme.

For more information about the case contact EDO (Qld) on (07) 3210 0275 or email edoqld@edo.org.au.

Nominate your favourite heritage place!

On 1 January 2004 amendments to the Commonwealth EPBC Act commenced which introduced a new national heritage regime. The new heritage laws establish two new lists for heritage places - the National Heritage List, and a Commonwealth Heritage List for heritage on Commonwealth land or waters.

Once established, the new National Heritage Council will consider all nominations and advise the Commonwealth Environment and Heritage Minister on places that should be included on the new Lists. If listed, the heritage values of National heritage places will be recognised as the seventh 'matter of national environmental significance' under the EPBC Act and protected within the limits of the Commonwealth Constitution.

The National Heritage Council is expected to be established early in 2004, after which public nominations of natural, cultural or indigenous places will be considered, so get organised and nominate your favourite natural, cultural or indigenous place for inclusion on the Lists!

To nominate a place for inclusion on the Heritage Lists, see www.deh.gov.au/heritage/national/request.html or contact the Heritage Division of the Department of Environment and Heritage on (02) 6274 1111.

North Queensland shires move towards IPA schemes

Cairns residents received an early present from Cairns City Council, when it released its new draft IPA planning scheme for public comment over the busy Christmas holiday period. Public submissions on the draft scheme closed on 30 January 2004.

Development of other IPA planning schemes continues in North Queensland with Townsville, Cairns and Mareeba all releasing draft schemes towards the end of 2003. Public comment on the Townsville draft scheme concluded on 31 October 2003 with the Council now working its way through more than 700 separate public submissions! EDO-NQ has held information seminars in Kuranda and Cairns for people interested in making submissions the draft schemes in their municipality. Of the 35 or so North Queensland shires, only 4 (Atherton, Burke, Cloncurry and Thuringowa) have thus far adopted IPA schemes. You can check on your municipality's progress towards transition to

an IPA scheme by looking up the Department's online register at www.dlgp.qld.gov.au/applications/PlanMakingProgress/.

For more information about North Queensland planning schemes and laws and helpful EDO publications contact EDONQ on (07) 4031 4766 or edonq@edo.org.au.

Reminder - draft Water Resource Plans released for comment

Don't forget your opportunities to comment on the draft Water Resource Plans for the Georgina and Diamantina Rivers (due 5 March 2004) and Condamine-Balonne (due 3 February 2004)! EDO (Qld) will be assisting the World Wide Fund for Nature Australia (WWF) with its submission on the Condamine-Balonne draft Water Resource Plan, and are happy to assist other clients with guidance on making their own submissions. See the Department's website www.nrm.qld.gov.au for copies of the draft WRPs.

For guidance on what to address in a submission, see EDO (Qld)'s Toolkit for Submissions on draft WRPs on our website at www.edo.org.au/edoqld or contact Jo Bragg on 32 10 0275.

EDO (Qld) benefit QELA seminar - EPBC Act update, Brisbane 1 March 2004

Want to know more about how the EPBC Act works? Cases brought by environmentalists (usually represented by EDO (Qld)!), and recently by the government, have demonstrated how effective the Act can be in protecting our environment. The Queensland Environmental Law Association's upcoming seminar *Fathoming the EPBC Act: Updates, Caselaw and Practical Tips* will canvass the operation of the Act and the effect of recent amendments (including the new heritage regime), discuss important caselaw and provide practical tips for government officers on their powers and responsibilities under the Act. The seminar is scheduled for 5:30pm on Monday, 1 March 2004, venue to be announced.

Speakers include experienced EPBC Act barrister Chris McGrath and EDO (Qld) solicitor Larissa Waters. Our thanks go to QELA for their kind offer to donate the proceeds of this seminar to EDO (Qld).

For more information about this seminar contact Maggie at QELA on 3832 4865 or info@qela.com.au.

EDO Northern Territory office seeks solicitor

The EDO(NT) is seeking a lawyer to provide legal advice and representation, carry out educational activities, promote policy and law reform in environmental law, and to supervise the administration of the Office. This is an exciting role for a suitably qualified person with a passion for environmental protection. Eligibility for unrestricted practising certificate in NT required. Salary \$68,000 (including Super) full time.

For position description, selection criteria and enquiries please phone Gill on (08) 8982 1182 or email edont@edo.org.au.

New premises for EDO (Qld)

Due to the installation of air conditioners where our front door was, EDO (Qld) have moved premises! We've moved from Level 4 to Level 9 of the same building, but all our phone, fax and email details are the same. Members are welcome to drop in and enjoy our brighter, more spacious office on Level 9!

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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