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Project Manager
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Department of Environment & Resource Management
GPO Box 2454
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CC: Minister for Climate Change and Sustainability, The Honourable Vicky Darling
CC Director-General, DERM

EDO comments on the Greentape Discussion Paper and Regulatory Assessment Statement

This is the submission of the Environmental Defender's Office-Queensland ("EDO-Qld") and Environmental Defender's Office of Northern Queensland Inc. ("EDO-NQ") ("the EDOs") on the 'Greentape Reduction – Reforming licensing under the Environmental protection Act 1994 – Discussion Paper and Regulatory Assessment Statement'.

Queensland Conservation Council, the 'peak' environment organisation in Queensland nominated EDO as its representative for consultation with DERM on these matters. This submission also represents the views of Queensland Conservation Council.

The EDOs are community legal centres that specialise in public interest environmental law in Queensland. The primary goal of the EDOs is to protect and enhance the environment in the public interest through use of the law, by and on behalf of the community. The EDOs are active in law reform and we welcome the opportunity to comment on this important Discussion Paper.

Yours faithfully,

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The EDOs comments on the Greentape Discussion Paper and Regulatory Assessment Statement:

SUMMARY

1. The EDOs are not convinced there will be a saving to the public or private purse by the reforms. Of 1400 surveys provided to industry operators to provide a baseline of compliance costs only 27 were completed and returned.
2. From a community perspective there are serious existing problems with environmental regulation- some of which could be fairly readily fixed, such as putting key materials online- and the proposed changes do nothing to increase transparency or accountability or to deal with those issues, discussed below.
3. In the initial response that the EDOs made dated 18 February 2011 we suggested that if DERM is committed to reducing its administrative burden then broader and more detailed consultation is required to be obtained, particularly from environmental groups but this has not occurred.
4. Another point we made in our first submission, which is not addressed in the Discussion Paper was that appropriate performance outcomes considering the objects of the EP Act need to be stated and measured to ensure that the reforms or elements of it do not reduce environmental protection.
5. To save time for DERM responding to telephone inquiries and for transparency and accountability, the EDOs propose that DERM place the following additional materials on its website under “Opportunities for Comment” or similar prominent location:
 - All public notices about opportunities for submissions/objections under the EP Act and all applications and supporting materials;
 - All public register documents referred to in section 542 EP Act;
 - All monitoring data; and
 - If the new licensing model is adopted, all documents pertaining to each assessment track referred to in the Discussion Paper Figure 1(page 9) irrespective of who carries out the approval or certification. Those documents should be added to the list of public register documents under the EP Act.

6. EDOs propose that DERM adopt a practice to seek public submissions on development proposals with a medium to high risk of environmental harm *early* in the IDAS process under SPA. That is, prior to DERM issuing the concurrence response to the council or local government who is the assessment manager. DERM could adopt a practice to this effect pursuant to section 256 of the SPA¹- and does not need DIP approval as its not a legislative amendment. Local knowledge will help DERM make better decisions and save time and cost in the long run.
7. For ERA development activities with a higher risk of causing environmental harm, EDO proposes that they be classified as “impact assessable” so that the public has rights of submission and appeal with the consequence that better conditions are attached, environmental harm is avoided and costs and expense are over the life of the project reduced for both government and industry. (This needs legislative amendment to SPA unlike the earlier proposal referred to above under s256 of SPA).
8. The EDOs require a firm assurance that rights of public submission or objection to Chapter 5 and Chapter 5A activities and rights of internal review and rights to apply or appeal to the independent Land Court will not be diminished even a skerrick either directly or indirectly by the reforms.
9. Further, the EDOs propose that given the serious consequences of mining and petroleum activities, the submission/objection rights for members of the public ought to be expanded additionally to all petroleum activities- not just mining leases and level 1 petroleum activities. This is to increase accountability, one of the principles of the reform, and because the conditions of approval will also be improved by submitters’ local knowledge to better protect the environment.
10. The four assessment track will succeed or fail according to what activities are appropriately or inappropriately placed into each of the 4 tracks- but before the EDOs can put forward a view as to if this is acceptable, we need to know exactly activities are proposed to go in each category and what public rights of submission and access to information will apply to each category.
11. In relation to the proposal to reduce the information to be assessed, it is of concern that it is proposed to review and potentially narrow the criteria, especially as the purpose of the EP Act is ecologically sustainable development.

12. In respect of the proposal to have an operator's licence and development permit, will the public be able to scrutinize and have input into the licence equally as if it is part of a development application?
13. In the case of Mr. Bridges' case mentioned earlier, he had input into concurrence air conditions through joining an appeal under SPA. We do not agree with a changed system if members of the public have less rights to review and scrutinize important elements of DERMS concurrence agency conditions such as emission limits.

EDO comments on the Greentape Discussion Paper and Regulatory Assessment Statement

Detailed Response

Broad Comments

1. The Discussion Paper ("DP") states "The key aim of the project is to reduce costs to industry and government of environmental regulation while upholding environmental standards for the community." (page 9) The reforms principles are stated to be Transparent, Accountable, Consistent, Proportionate and Outcome focused.
2. From a community perspective there are serious existing problems with environmental regulation- some of which could be fairly readily fixed- and the proposed changes do nothing to increase transparency or accountability or to deal with those serious issues, discussed below. In fact the new four track assessment process, information reduction and division between development permits and operational licence appear to reduce accountability unless there are initiatives not fully explained in the Discussion Paper. We agree with the QLS submission that we do not want to see a reduction in accountability.
3. Further, we are not convinced there will be a saving to the public or private purse by the reforms. Of 1400 surveys provided to industry operators to provide a baseline of compliance costs only 27 were completed and returned, (p26 of the Regulatory Impact Statement). Our experience is that industry groups consistently complain about regulation –even when regulation is justified or delays are the fault of industry- so the poor response on the survey means much of the projected costs savings are doubtful.

And there are administrative costs not considered due to the increase in public complaints and controversy that is likely to occur with numerous developments that are assessed and approved in shorter timeframes without enough public input.

4. We also note that 4 groups are listed as consulted community groups but QELA and the Qld Law Society are not regarded generally as community groups. In the initial response that the EDOs made dated 18 February 2011 we suggested that if DERM is committed to reducing its administrative burden then broader and more detailed consultation is required. In particular we suggested that there needs to be significantly greater participation sought from environmental groups not merely industry and government- but this does not appear to have been taken up.
5. Another point we made in our first submission was that measurable performance outcomes based on the objects of the EP Act are needed to ensure that the reforms or elements of it do not reduce environmental protection. So while the DP asserts that environmental standards will be upheld- how will that be measured? We note that the IDAS system under the *Integrated Planning Act* 1997 was all about performance measures in planning schemes but never measured its own performance, with the focus of achievement on how many days it took to push through a development.

Improvements to Access to Information needed

1. A great deal of time and expense is wasted currently when the community cannot access *Environmental Protection Act* 1994 (“EP Act”) Act documents quickly and easily to see what applications are in progress or to see what documents have been lodged with or produced by DERMⁱⁱ. For mining and petroleum activities there is very poor public notification, and unacceptably poor access to information about applications and supporting materialsⁱⁱⁱ under the EP Act. Why should there be better access to information on submission opportunities and copies of information relating to a small development in inner city Brisbane under the *Sustainable Planning Act* 2009 (“SPA”), than there is for major mines and coal seam gas and other major EP Act activities?
2. The Environmental Authorities under the EP Act are not even online. If community members have to apply and wait for and pay for a copy to see the conditions of approval, this makes it hard for the community to know if an operator is acting legally

or illegally, and thus increases the chances of more work for DERM in following up on later community complaints. By contrast, Environmental Licences are online in Victoria^{iv} which is more efficient and accountable.

3. For transparency and accountability, the EDOs propose that DERM place the following additional materials on its website under “Opportunities for Comment” or similar prominent location:
 - All public notices about opportunities for submissions/objections under the EP Act and all applications and supporting materials;
 - All public register documents referred to in section 542 EP Act;
 - All monitoring data; and
 - If the new licensing model is adopted, all documents pertaining to each assessment track referred to in the Discussion Paper Figure 1 (page 9) irrespective of who carries out the approval or certification. Those documents should be added to the list of public register documents under the EP Act.
4. This will increase transparency and accountability, and save administrative time for DERM staff responding to ad hoc telephone requests for public register documents. It will save time for the community people^v endeavouring to contribute to effective decision making by supplying DERM with valuable local knowledge of sites and potential impacts.
5. A question: why is the time spent by community members providing information to DERM not discussed and valued in the Discussion Paper?

Saving Cost by improving public participation

1. EDOs propose that DERM adopt a practice to seek public submissions on development proposals with a medium to high risk of environmental harm *early* in the IDAS process under SPA. That is, prior to DERM issuing the concurrence response to the council or local government who is the assessment manager. DERM could adopt a practice to this effect pursuant to section 256 of the SPA^{vi}- and does not need DIP approval as its not a legislative amendment. With timely public input matters might be resolved early and save the effort and expense of unnecessary Court cases for DERM.

2. Increasing formal public submission and appeal rights on some ERAS will in the long run save funds through less controversy after approval, and lead to better environmental outcomes. The example of Mr Ian Bridges' case^{vii} shows the improved outcomes in terms of better conditions concerning air emissions from formal public participation by way of submission and appeals process. This saves money in the long run for government and the community. But currently the public has no submission or appeal rights for most code assessable developments, including MCU for ERAs under the *Sustainable Planning Act 2009* ("SPA").^{viii}

3. For ERA development activities with a higher risk of causing environmental harm, EDO proposes that they be classified as "impact assessable" so that the public has rights of submission and appeal with the consequence that better conditions are attached, environmental harm is avoided and costs and expense are over the life of the project reduced for both government and industry. (This needs legislative amendment unlike the earlier proposal referred to above under s256 of SPA) Submission and appeal rights for level 1 ERAs were originally included in the EP Act when the EP Act was first passed by Parliament and this review of licensing is a good chance to bring in those rights to aid the stated purpose of the review.

Resource Approvals Chapter 5 and Chapter 5A Mining and Petroleum Activities

1. We appreciate that the resources sections of the EP Act are complex and some simplification is desirable. However mining and petroleum activities carry very high risk of causing environmental harm when things go wrong- and things do go wrong as is seen in the inadequate preparation of mines in central Queensland to cope with high but predictable rainfall events, and in the various incidents associated with coal seam gas wells above the valuable Condamine Alluvium "blowing" as witnessed recently^{ix}.

2. Further, all enterprises that produce fossil fuels with Greenhouse gas consequences and the assessment processes pertaining to them deserve a very high level of public scrutiny.

3. The EDOs require a firm assurance that rights of public submission or objection to Chapter 5 and Chapter 5A activities and rights of internal review and rights to apply or appeal to the Land Court will not be diminished even a skerrick either directly or indirectly by the reforms.

4. Further, the EDOs propose that given the serious consequences of mining and petroleum activities, the submission/objection rights for members of the public ought to be expanded additionally to all petroleum activities- not just mining leases and level 1 petroleum activities -as by increasing accountability, one of the principles of the reform, the conditions of approval will be improved by submitters' local knowledge to better protect the environment.
5. While the EDOs see that third party certifiers, properly audited, might have a role to play under the EP Act for minor assessments, on reflection we now strongly recommend that third party certifiers are not considered for Chapter 5 and 5A mining and petroleum activities or for the majority of other assessments under the EP Act. Experience of private certifiers for building matters by some of our clients is they are far less accountable than public servants, and in the mining context there is the risk of a certifier favouring a mining companies interests over applying the rules when that company is a regular well-paying client.
6. The four assessment track will succeed or fail according to what activities are appropriately or inappropriately placed into each of the 4 tracks- but before the EDOs can put forward a view as to if this is acceptable, we need to know exactly activities are proposed to go in each category and what public rights of submission and access to information will apply to each category. EDOs seek the same information for the proposed "compliance assessment" stage referred to on page 25 of the Discussion Paper. The EDOs are extremely concerned that these new tracks and stages will reduce public scrutiny and accountability of the assessment process. We note from page 14 of the Discussion Paper that there are Stakeholder Committees formed, but EDO is not on those committee and do not know what criteria is being applied to categorise the activities.

Streamlining Information Requirements

1. In relation to the proposal to reduce the information to be assessed, it is of concern that it is proposed to review and potentially narrow the criteria, especially as the purpose of the EP Act is ecologically sustainable development. And there may be new Environmental Protection Policies ("EPPs") that are developed on new and different subjects so it makes sense to continue to include EPPS as a criteria despite the

inclusion of some criteria in the EP Regulation. In relation to the proposal to remove environmental management plans and replace them with an application document, we do not agree. The reason is that there is currently a strict requirement that the environmental management plan for petroleum activities comply with s310D EP Act so there is some rigour as to its contents. What is proposed for the application form- will it be mandatory for the information to be supplied in lieu of which the application will not be properly made? Or will some lesser standard suffice?

Flexible Operational Approvals

1. The Discussion Paper includes proposes a flexible operator's licence AND development permit and includes at page 18 an example relating to aquaculture, which has certain matters in the development permit and other important matters , such as maximum dissolved nitrogen in the operator's licence. This immediately raises 2 matters:
 - This appears to be an attempt to partially unwind the EPAct from the "roll-in" to IDAS; and
 - Will the public be able to scrutinize and have input into the licence equally as if is part of a development application? If it does not go through the IDAS process but is assessed within the IDAS timeframes ?
2. In the case of Mr. Bridges' case mentioned earlier, he had input into concurrence air conditions through joining an appeal under SPA. We do not agree with a changed system if members of the public have less rights to review and scrutinize important elements of DERMS concurrence agency conditions such as emission limits.

ⁱ 256 Assessment manager or concurrence agency may seek advice or comment about application

(1) The assessment manager or a concurrence agency for an application may ask any person for advice or comment about the application at any stage of IDAS, other than the compliance stage.

(2) There is no particular way advice or comment may be asked for and received and the request may be by publicly notifying the application.

(3) To remove any doubt, it is declared that—

(a) asking for and receiving advice or comment does not extend any stage; and

(b) public notification under subsection (2) is not notification under part 4, division 2.

ⁱⁱ Where the development is assessable development under SPA there is adequate access to information on the development. Ideally the application and supporting information documents are online -as is the case for SPA developments within Brisbane City Council area .

ⁱⁱⁱ See the detailed letter dated 15 June 2011 from the EDOs to the Premier about major problems with these processes.

^{iv} The database is accessible on the Victorian EPA website - <http://www.epa.vic.gov.au/compliance-enforcement/licences/corporate-licence-search.asp>

^v Why should we have to ring up the Mining Registrars office every two weeks to see if there are any application for environmental authorities for mining? Many rural and urban clients are interested but miss the single public notice in the one newspaper?

^{vi} 256 Assessment manager or concurrence agency may seek advice or comment about application

(1) The assessment manager or a concurrence agency for an application may ask any person for advice or comment about the application at any stage of IDAS, other than the compliance stage.

(2) There is no particular way advice or comment may be asked for and received and the request may be by publicly notifying the application.

(3) To remove any doubt, it is declared that—

(a) asking for and receiving advice or comment does not extend any stage; and

(b) public notification under subsection (2) is not notification under part 4, division 2.

^{vii} Referred to in the EDOs first submission on reducing Greentape dated 18 February 2011. One example is the Barro Quarry Case which involved input from Ian Bridges, an air quality expert, who highlighted that DERM had applied a standard DA condition on PM10 independent of background levels, other nearby industry and good environmental practice. This meant that the resultant approval would breach EPP Air guideline values for this parameter. This was a significant improvement in terms of environmental outcomes that would not have resulted but for the community input.

Another example of where community action has resulted in improved outcomes is *Bridge v Redland Shire and Cleveland Power P&E Appeal 1251 of 2007*. This case was a submitter appeal concerning a biomass energy plant. The input from the community submitter (Ian Bridges) caused the then EPA to extensively change its concurrence agency response to regulate more air contaminants, change methodology and standards of monitoring and to alter the limits of some contaminants. This case shows the value of submitter input in getting appropriate conditions to protect human health which ultimately saves later regulatory controversy and health costs.

^{viii} In Mr. Bridges' Barro Quarry case he was a correspondent to a developer appeal on an impact assessable development so that is a special case under IDAS where he could take issue with conditions relating to code assessable ERA matters as part of the appeal.

^{ix} <http://www.abc.net.au/news/stories/2011/05/24/3225059.htm?site=southqld> See report of Arrow Energy coal seam well accident that discharged water and gas 40 metres into the air in a widely reported accident on Sunday 21 May 2011 at the property of farmer Tom O'Connor on the Darling Downs, Queensland.