

Environmental Defender's Office of North Queensland Inc.



Monthly Newsletter: May 2011

*Current public interest environmental law matters affecting
the community in Northern Queensland*

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QGC gets Commonwealth slap on the wrist for illegal clearing

On 15 April 2011, the Commonwealth Department of Sustainability, Environment, Water, Population and Communities announced it had issued 3 penalty infringement notices to Queensland Gas Company (“QGC”) for unapproved clearing of up to 6 km of vegetation associated with construction of a pipeline coal seam gas (“CSG”) field in the Surat Basin with a liquified natural gas (“LNG”) plant on Curtis Island, near Gladstone. Commonwealth approval of QGC’s environmental management plan – a condition of Commonwealth approval under the *Environment Protection and Biodiversity Conservation Act 1999* (“EPBC Act”) — was required before such clearing could occur.

The total penalty imposed on QGC was \$19,800. According to the Commonwealth’s media release, “[t]he notices given to QGC send a strong signal to companies that the department takes compliance with national environmental law very seriously with penalties and breaches enforced”.

While EDO-NQ applauds the Commonwealth for at least pursuing enforcement remedies for QGC’s violations of its conditions of approval, a \$19,800 fine is hardly “serious” and hardly sends a “strong signal” that would be likely to induce QGC to avoid violating the law in the future. In EDO-NQ’s view, the Commonwealth’s penalty represents little more than a “slap on the wrist” to QGC.

The fine is minimal when compared to the amount of land and vegetation cleared by QGC (i.e., at least 6,000 linear metres). Assuming the vegetation cleared was only 1 metre wide (there is no information whether a wider swath was cleared), a \$19,800 penalty works out to \$3/metre for illegal clearing operations.

The paltriness of the penalty assessed against QGC becomes more pronounced when it is compared to either the value of the Curtis Island LNG project or to the profits of QGC or QGC’s parent, BG Group. The Curtis Island LNG project represents an \$8 billion investment, according to QGC. The Commonwealth’s penalty for illegal clearing associated with the Curtis Island LNG project works out to a minuscule fraction of a percent (just a little over 0.00024%) of the overall investment. Likewise, the proposed penalties represent a tiny percentage of QGC’s annual net profits (\$244 million in 2008, according to ASX), and an even tinier percentage of BG Group’s annual net profits (\$4.136 billion in 2010, according to BG’s annual financial statement).

Finally, it is worth noting that – according to the Commonwealth’s website – “[a] person who takes, or fails to take, an action that results in contravening a condition of their approval, can be liable to pay a civil penalty of up to \$110,000 for an individual and up to \$1 million dollars for a body corporate”. See <http://www.environment.gov.au/epbc/compliance/compliance-mechanisms.html>. In other words, QGC could have been fined up to \$3 million for its 3 violations of the conditions of its Commonwealth approval – yet was given only a \$19,800 penalty. In other words, the Commonwealth’s penalty represents about two-thirds of 1 percent of the penalty that it could have imposed on QGC.

If the Commonwealth truly wants to be serious about punishing violations of federal environmental laws, or sending strong signals to deter non-compliance with those laws – goals EDO-NQ fully supports – it will have to do better than this.

New SPP 5/10 protects industry from . . . people!

State Planning Policy 5/10: Air, Noise and Hazardous Materials (SPP 5/10) took effect on 2 May 2011. It aims to keep development involving sensitive land uses away from medium and high impact industrial land uses. “Sensitive land uses” generally involve structures where people live, work, or are accommodated for short term stays. Development subject to SPP 5/10 is defined as lot reconfigurations and material changes of use.

The intent of SPP 5/10 is to provide a more strategic planning focus on the location and protection of industrial land uses, and to provide direction to local governments regarding:

1. where industrial land uses should be located to protect communities and individuals from the impacts of air, noise and odour emissions, and the impacts from hazardous materials, and
2. how land for industrial land uses will be protected from unreasonable encroachment by incompatible land uses.

SPP 5/10 aims to guide the amendment of local planning instruments, structure plans and master plans, in four ways:

1. Industrial land uses (particularly uses for medium impact, high impact, extractive, and noxious and hazardous industry) are directed away from land uses that are sensitive or at risk from the impacts of industry.
2. Industry zones are protected from encroachment by sensitive land uses.
3. Industrial land within a state development area, enterprise opportunity area or emerging major employment area in a regional plan, is protected from encroachment by sensitive land uses.
4. Intensive animal industries are directed away from urban areas and protected from encroachment by sensitive land uses.

Local planning instruments are also to provide buffer zones between sensitive land uses and industrial land uses. Where this can't be done, local plans must ensure that sensitive land uses mitigate emissions from surrounding industrial land uses.

Development associated with sensitive land uses may be allowed if: (1) it can be designed to ensure it adequately protects human health, wellbeing and amenity from air, noise and odour emissions, and human safety from the impacts of hazardous materials; and (2) it does not compromise existing or future industrial development. If SPP 5/10 seems to favour industrial uses over people, that is because this is precisely the goal of the policy – at least until local planning instruments can be amended. The burden for mitigating impacts falls on sensitive land uses, not industrial land uses—on the premise that existing industrial uses are regulated under the *Environmental Protection Act 1994* and *Dangerous Goods Safety Management Act 2001* rather than SPP 5/10.

New SPP 4/10 seeks to better manage urban water quality

State Planning Policy 4/10: Healthy Waters (SPP 4/10) took effect on 2 May 2011. SPP 4/10 aims to ensure development for urban purposes manages stormwater and waste water in a way that protects the environmental values specified in the *Environmental Protection (Water) Policy 2009*.

SPP 4/10 provides specific direction on urban stormwater management, waste water management, and management of non-tidal artificial waterways. However, SPP 4/10's application is restricted. It only applies to:

1. stormwater management of development proposals comprising at least six lots or dwellings;
2. waste water management of development for urban purposes if discharging waste water to a waterway; and
3. planning at all scales, including new "green field" urban areas as well as infilling and redevelopment of existing built-up areas.

As such, SPP 4/10 does not address potable water, water supply, water resource or groundwater management, or stormwater run-off in rural areas outside the *Environmental Protection Act 1994*'s jurisdiction for planning and development assessment.

SPP 4/10 also sets up requirements for new planning schemes and development assessment processes. Standards established in SPP 4/10 are minimum requirements and local governments are free to adopt more stringent regulations to better protect local waterways. However, in case of any conflict between the SPP and local planning provisions, the policy's standards prevail.

SPP 4/10's requirements do not apply to development applications made before 2 May 2011. However, new developments must be assessed against the assessment code contained in SPP 4/10 until local governments adopt the measures in their planning schemes.

Community legal education at Cardwell

On May 25 EDO-NQ solicitors visited Girrigun Aboriginal Corporation at Cardwell to discuss how environmental law related to the work of the rangers working there. We listened to the issues faced by the community and discussed how environmental regulations interact with native title laws.

This is a complex area of law, where both environmental issues and indigenous development interests need to be carefully balanced. Our solicitors learned much from the discussion, and thank the rangers for welcoming us for the day.

DERM launches Greentape Reduction Project

The Department of Environment and Resource Management (“DERM”) has launched the “Greentape Reduction Project”. This initiative aims to streamline environmental regulations and reduce the burden on business. The particular focus is on the *Environmental Protection Act 1994*.

EDO-NQ generally supports the aims of the project. The Greentape Reduction Project’s key aim is to reduce the regulations on low risk environmental activities to allow a greater focus on higher risk activities. The reasoning is that low risk activities currently use as many regulatory resources as high risk activities, and so reduce available government resources while imposing unnecessary costs on business.

However, EDO-NQ believes the Government’s focus needs to be shifted a bit.

The problems the Greentape Reduction Project seeks to address have arisen primarily because DERM is significantly underfunded for what it is tasked with achieving. As such, we believe that providing increased funding to regulatory agencies is part of the solution to the problems cited as justification for the project. Moreover, EDO-NQ is skeptical of initiatives that seek to reduce purported regulatory burdens because they all too frequently became vehicles for undermining or eliminating provisions intended to protect the environment, public, etc. for the sake of economic development.

In particular, programs seeking to reduce administrative burdens on industry, developers, etc. cannot be justification for reduced funding to meet the same regulatory outcomes. The outcome of any environmental law initiative must be to achieve better environmental protection.

EDO-NQ will monitor the Greentape Reduction Project closely to make sure it truly benefits the environment rather than the development community.

Contact us

To become a member of EDO-NQ, receive legal advice on matters of public interest environmental law, or otherwise support our work, please contact us:

Suite 1, Level 1, 96-98 Lake Street

CAIRNS QLD 4870

Ph : 07 4031 4766; Fax: 07 4041 4535

Email: edong@edo.org.au; Website: <http://www.edo.org.au/edong/>