

Environmental Defender's Office of North Queensland Inc.



Monthly Newsletter: September 2011

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

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EDO-NQ Opposes Coal Mine On Princess Charlotte Bay

On 8 September 2011, EDO-NQ made a joint submission with the Cairns and Far North Environment Centre ("CAFNEC") under the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)* ("EPBC Act"), opposing Aust-Pac Capital Pty Ltd's proposed underground coal mine and associated infrastructure at Wongai. Wongai is located 150 km northwest of Cooktown, on the eastern side of Princess Charlotte Bay on the Cape York Peninsula. Aust-Pac proposes to mine approximately 50 million tonnes of coal beneath the site over the next 25+ years, to build some 15 km of conveyor lines and associated roadways, and construct and operate barge loading and unloading facilities on Bathurst Bay to the north of the site.

Aust-Pac proposes to extract the coal via "bord-and-pillar" mining methods, in which coal is extracted across a horizontal plane leaving "pillars" of untouched material to support the roof overburden separated by mined out open areas or "rooms". The degree to which overlying rock (ie., overburden) is likely to collapse into the mined-out voids depends on the respective sizes of the voids and pillars, the intrinsic strength of the rock underlying those pillars, and the amount and strength of the overburden. Aust-Pac



(Photo: Princess Charlotte Bay (2005), SEPM Sequence Stratigraphy Web)

advised that the coal it intends to mine is approximately 250 metres deep, beneath largely flat coastal plains, wetlands and watercourses associated with the Great Barrier Reef and home to numerous threatened species of plants and animals, as well as migratory species of birds and marine life.

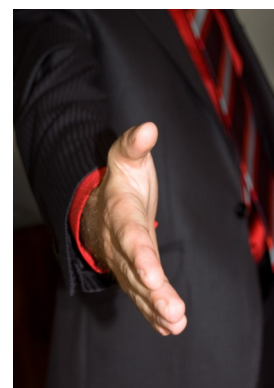
EDO-NQ and CAFNEC pointed out that that widespread surface subsidence associated with the mining proposed by Aust-Pac is likely to occur. For one thing, the deeper the seam of coal to be mined and the flatter the terrain overlaying it, the greater the extent and degree of surface subsidence expected as overburden collapses into the mined-out voids beneath. Given the depth of the coal seam Aust-Pac proposes to mine, the relatively flat terrain above – and unknowns associated

with the rock strata and hydrology at the site – Aust-Pac's proposed mine could result in potentially massive adverse impacts on the species and ecosystems at the Wongai site. EDO-NQ and CAFNEC cited recent studies in New South Wales indicating that bord-and-pillar mining at the depths proposed by Aust-Pac is almost certain to result in subsidence. Indeed, those studies suggest that the mining method proposed by Aust-Pac is unlikely to be economically viable since much of the coal in the ground would need to be left in place in pillars to support the 250 metres of overburden and minimise subsidence. The joint submission also raised significant questions over Aust-Pac's sanguine predictions that barge loading and unloading operations associated with the proposed mine would have little or no effect on the Great Barrier Reef itself. A copy of the 8 September 2011 submission by EDO-NQ and CAFNEC can be viewed on our website at <http://www.edo.org.au/edonq/>.

EDO-NQ Farewells Second Solicitor

After working as EDO-NQ's second solicitor for nearly 3 years, Patrick Vuleta resigned on 5 August 2011 in order to return to his home town of Brisbane. During his tenure, Patrick provided valuable assistance to EDO-NQ clients and staff and his presence will be missed by both. After taking a short break, Patrick will be following his first passion – writing – starting with contributing articles to a number of legal publications, with a particular focus on environmental law matters.

Please join with us in wishing Patrick the very best of success and happiness in his future endeavours.



Commonwealth Urged To Reject Sand Mine

In conjunction with the Mackay Conservation Group (“MCG”), EDO-NQ lodged a submission with the Commonwealth’s Environment Minister under the EPBC Act on 26 August 2011, urging the Minister to reject sand mining proposed by Bedrock Landscape Supplies (QLD) Pty Ltd (“Bedrock”) at a site located less than half a kilometre from internationally recognised Ramsar wetlands at Cape Cleveland Bay, some 26 kilometres south of Townsville.

Bedrock proposes to mine approximately 50,000 cubic metres of sand from approximately 34 Ha of a roughly 75 Ha property. The company proposes to mine sand to a depth of + 1.0m AHD (Australian Height Datum; 0 AHD being mean sea level) in order to avoid uncovering acid sulphate soils that are known to exist in the area. In its referral, Bedrock asserted that its proposed sand mine should not be considered a “controlled action” requiring Commonwealth approval under the EPBC Act, based on the company’s assertion that threatened or migratory species are not present on the site and that the sand mine will have no impact on the Ramsar wetlands nearby.

EDO-NQ and MCG challenged Bedrock’s assertions in their 26 August joint submission to Minister Burke. For one thing, EDO-NQ and MCG noted that the Minister had determined that the proposed sand mine located immediately to the east of Bedrock’s proposed mine was a “controlled action” and that, given the similarities between the two sand mining proposals, Bedrock’s proposed mine should likewise be declared a “controlled action” under the EPBC Act. More importantly, EDO-NQ and MCG challenged the factual bases of Bedrock’s assertions that none of the many threatened and migratory species known to occur in the vicinity occurred on Bedrock’s property. For one thing, it was pointed out that Bedrock’s species survey was undertaken during a limited portion of the dry season when many species of fauna would normally not be found in the area. It was also noted that Bedrock did not undertake a thorough survey of flora to determine whether threatened species occurred on the property. EDO-NQ and MCG also questioned Bedrock’s assertions that the proposed sand mine would not affect the surface- and groundwater in the area and noted that the area is prone to significant flooding in the wet season, and that the water table at this time is often +4.0 AHD or more – meaning the sand mine would create a large “window” into groundwater at the site. In addition, EDO-NQ and MCG noted that the proposed sand mine could reverse groundwater and surface water flows at the site, potentially impacting the hydrology of the nearby Ramsar wetlands. Finally, the joint submission also noted that the proposed sand mine could likely result in exposing acid sulphate soils, leading to acidification of the nearby wetlands, in view of the fact that such soils were exposed at depths above +1.0 AHD (the depth to which Bedrock proposes to mine) at the sand mine located southeast of Bedrock’s proposed mine. Bedrock’s proposed sand mine drew several other submissions from opponents. The 26 August submission lodged by EDO-NQ and MCG is available at EDO’s website at <http://www.edo.org.au/edonq/>.

Draft Mackay, Isaac, Whitsunday Regional Plan Draws Comment

It being a busy season for lodging submissions, EDO-NQ also teamed up with the Mackay Conservation Group ("MCG") to lodge comments with the Queensland planning and infrastructure department regarding draft Mackay, Isaac, Whitsunday Regional Plan ("MIWRP") on 9 September 2011. The MIWRP is yet another state planning instrument that is intended to be the preeminent planning instrument for the areas covered by the Mackay, Isaac and Whitsunday regional councils and sets regional planning goals that must be taken into account in local planning decisions and planning and environment court appeals until 2031. Similar regional plans have been established for Southeast Queensland and for Far North Queensland, among others.

In their comments, EDO-NQ and MCG noted that, while they are generally supportive of the regional planning effort, they retained significant reservations with the draft MIWRP as proposed, predominantly with respect to: wildlife corridors and threatened species and ecosystems; various "exemptions" within the regulatory provisions for certain types of development; a lack of clearly achievable directives and ambitions for transport and energy efficiency; and the draft MIWRP's capacity to be implemented and properly resourced. In light of the strong likelihood of climate change impacts to the region and increasing costs of fossil-fuel based energy sources, EDO-NQ and MCG also urged the State to enhance the resilience of natural and human communities through proper planning initiated now, rather than 5-10 years into the future and questioned what appears to be a predisposition to approve and encourage additional fossil fuel mining and production in the region, notwithstanding the contribution to climate change associated with this industry.

A copy of the 9 September 2011 joint comments can be accessed at <http://www.edo.org.au/edonq/>.

EDO-NQ In The Community In August-September

EDO-NQ was busy with public and community events during August and September. In August, EDO-NQ staff and friends joined other environmental activists as part of the Climate Change Action Network's pedestrian float entry during the 21 August parade as part of this year's Festival Cairns. Principal solicitor for EDO-NQ, Patrick Pearlman, gave short presentations regarding the organisation's role and activities to the Cairns-North and Cairns-Mulgrave chapters of Rotary International on 24 and 26 August, respectively.

In September, Patrick appeared on the 2 September 2011 installment of Cairns FM 89.1's one-hour radio talk show, "At Your Service", hosted by Michael Friganotis. Two days later, on 4 September 2011, EDO-NQ hosted a stall at the "Carnival on Collins" in Cairns' Botanical Gardens while Patrick gave a half-hour presentation on ways the public can use environmental law to further the public interest.

If you would like EDO-NQ to give a presentation or participate in a public event in your area, give us a call at 07 4031 4766 or email us at adminnq@edo.org.au.

Reforms Proposed For Key Commonwealth Environmental Law

On 24 August 2011, the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities, Tony Burke, released the government's response to Dr. Allan Hawke's independent review of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (the "EPBC Act"), which was tabled to Parliament in 2009. The EPBC Act is the primary piece of national environmental legislation and provides substantial powers to the Federal government to review and regulate matters of national environmental significance ("MNES") and conserve biodiversity.

As described by Minister Burke's department, major elements of the proposed EPBC Act reforms include:

- taking a more proactive approach to protecting Australia's environment through more strategic assessments and regional environment plans;
- developing a more streamlined environmental assessment process, in which states are given greater authority for reviewing and approving projects that impact matters of national environmental significance;
- delivering an Australian Government biodiversity policy to help protect our ecosystems across the continent;
- producing a single national list of threatened species and ecological communities to reduce inconsistencies between state and federal jurisdictions;
- making more information publicly available, including recommendation reports for Minister decisions under national environment law;
- introducing a more transparent heritage listing process based on a single assessment list, and more open discussion about heritage values with stakeholders;
- creation of a draft environmental offsets policy to apply to impact assessments under the EPBC Act.

The jury is still out on the proposed reforms to the EPBC Act but initial indications are not good if you're an environmentalist. For example, Minister Burke's response rejected Dr. Hawke's recommendations that would have made it easier for green groups to launch legal challenges to projects, would have made protection of the environment the primary purpose of the EPBC, and which called for creation of a national environment commission. Likewise, Minister Burke's response to the Hawke Report rejected proposals to include new triggers requiring Commonwealth approval of projects with high carbon emissions or significant impact on water resources. Perhaps most troubling is the proposal to delegate to the States power to approve projects that affect matters of national environmental significance. In the past, environmental activists have often sought Federal review of proposed projects under the EPBC Act because States have been perceived as biased in favour of development. EDO-NQ agrees with Dr. Ian Sinclair, of the Australian Conservation Foundation, who has characterized delegation to the States of such matters as "a backward step". That the Labor Government has apparently signaled that will seek the support of the Coalition rather than the Greens and independent MPs to introduce the changes likewise cannot be seen by environmental activists as promising.

Annual General Meeting Set For 20 Oct. 2011

EDO-NQ members will soon receive notice that the Annual General Meeting of the Association for 2011 will be held from 5:30 to 6:00 pm on Thursday, 20th October 2011 at the Stratford Library Meeting Room, 11 Kamerunga Road, Stratford. Elections will be held for all nine members of the Association's Management Committee. The Management Committee must include a President, a Secretary, a Treasurer and not less than two (2) or more than six (6) ordinary committee members", and that 6 positions are reserved for a nominee from each of the following: Cairns and Far North Environment Centre Inc.; North Queensland Conservation Council Inc.; Mackay Conservation Group Inc.; Cairns Community Legal Centre Inc.; Townsville Community Legal Centre Inc.; and the Dean of the Faculty of Law, James Cook University.

The AGM is a great opportunity to find out how EDO-NQ is doing, hear reports from the Association's Management Committee and staff and provide your own feedback and suggestions. If you need more information about the AGM, please contact us.

Contact EDO-NQ

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:

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