



## ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC

### The Community in Planning & Environmental Law

*Presented by Anita O'Hart and Scott Sellwood*

EDO – for membership and donations see [www.edo.org.au/edoqld](http://www.edo.org.au/edoqld)

#### Avenues for Community Participation in Planning & Environmental Law

- In order of importance: lobbying; submissions on planning and law reform; submissions against proposals; and finally legal action as a last resort.

#### The Community and the *Integrated Planning Act*

- Queensland's most important piece of land use legislation.
- Two main avenues for community involvement under IPA: plan making & development assessment.

#### Involvement in the plan making process:

##### *The importance of the plan making process*

- Planning schemes are the most important tool used by councils and decision makers when deciding what development can occur where.
- Easier to stop inappropriate development at the planning stage, rather than at the development assessment stage.

##### *Problems for community in the plan making process*

- Plans are lengthy and complex.
- Plans are very uninteresting and abstract.
- Involved late in the process and a feeling of not being heard.

#### Involvement in the development assessment process

##### *When can the community have a say in the outcome of a development proposal?*

- The community only has a right to lodge submissions and challenge a proposal in court if the development applications for “*impact assessable development*”.
- A large number of projects and developments are excluded, such as
  - “Code assessable” applications, e.g. the Maleny Woolworths development.
  - Many large projects such as the Traveston Dam and infrastructure projects.
- Impact assessable development applications are publicly notified and the community is invited to lodge written submissions.
- Any person who lodges a written submission is given the right to appeal the council's decision in the Planning & Environment Court.

##### *Problems*

- If development is generally envisioned by the planning scheme, decision unlikely to go your way.

- A lot of work to monitor current impact assessable development applications.
- Not much time to view application, make sense of application and prepare submission.

#### *Benefits*

- Right to appeal to the Planning & Environment Court and be involved in negotiation.
- In the Planning & Environment Court, the community can challenge the merits of the decision (there are only very limited avenues in environmental law to challenge the merits of environmental decision making).

### **The community in the Planning & Environment Court**

#### *Benefits of being in court*

- It allows a full rehearing of the merits.
- Free from political pressures faced by council.
- Each party pays own costs.

#### *Challenges of being in court*

- Know what you want to achieve and your chances of achieving it.
- Appeal requires a massive commitment in terms of time, money, and personal energy.
- The playing field is not level.
- EDO (Qld) prepared the Community Litigants Handbook as a way to help community litigants overcome some of these challenges.

#### *Benefits of Mediation for Community Litigants*

- There are no fixed rules of procedure or evidence.
- There are no limits to the type of outcomes that can be designed.
- There is greater scope for the mediator to 'level the playing field'.
- It is free.

### **Two Case Studies of community involvement in planning & environmental law.**

#### *Kirkham v BCC and Souths Rugby [2007] QPEC 106*

- Local community interest in the heritage significance of memorial fig trees in the Yeronga Memorial Park. Souths Rugby proposed a competition playing field next to the memorial trees.
- Small group against developer and the council.
- Successful in court – development application refused – a rare win for community.

#### *QCC and the Xstrata Coal Mining Application*

- Application by QCC seeking that Xstrata, in a mining lease application, be required to avoid, reduce or offset some of its greenhouse gas emissions from the mining, transport and use of the coal.
- Test case in the wider public interest.
- QCC unsuccessful in the Land & Resources Tribunal (*Xstrata Coal Qld Pty Ltd & Ors, re [2007] QLTR 33*) but successful in the Court of Appeal (*Queensland Conservation Council v Xstrata Coal Queensland [2007] QCA 338*).
- State Government introduces special legislation to override the win for the community and the environment.
- Reinforces the importance for community to lobby governments in relation to environmental protection.