

**ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.
ENVIRONMENTAL DEFENDERS OFFICE OF NORTHERN QUEENSLAND INC.**

BULLETIN

February 2006

What's in this Bulletin?

This Bulletin updates you on EDO's current **court cases** including a new appeal about critical frog habitat and developments on the False Cape appeal in Cairns. We summarise **recent legal changes** to federal energy efficiency laws, state greywater regulations and new rules about local Councillor's conduct. Get busy, because there are seven **opportunities to submit comment** on government initiatives about protected areas, climate change, affordable housing, water supply and Wild Rivers. We flag upcoming planning workshops in Townsville and Mackay, and in **EDO news** we farewell two EDO-NQ committee members and EDO-Qld's intern Victoria Parkinson. EDO-NQ's trivia night is coming up in Cairns, and we give you a **useful tip** about an EPBC Act newsletter. Happy reading! *(Reader feedback on our Bulletin is welcome)*

COURT CASE NEWS

Case update from EDO-Qld

Nature Conservation Act bat case - *Booth v Frippery Pty Ltd and Thomas*

This Court of Appeal test case about protected wildlife will be heard in Brisbane on 27 February 2006. Members of the public are welcome to attend but must observe court protocols such as bowing to the judges, switching off mobile phones and keeping quiet.

Dr Booth still needs donations in this case to help pay court fees, transcript fees and barristers' fees. Tax deductible donations can be made to EDO Qld by cheque or by credit card using the donation form at www.edo.org.au/edoqld/edoqld/new/membership%20form.pdf. Please note on the donation that you "prefer the donation to be spent for the bat case".

For more information about EDO-Qld cases contact us on (07) 3211 4466 or edoqld@edo.org.au.

Case update from EDO-North Qld

Hillslope Development Case – *SOS & CAFNEC v Reef Cove Resort Ltd & Cairns City Council*

Recall that EDO-NQ on behalf of SOS and CAFNEC are seeking declarations in the Planning and Environment Court that the development and operational works approvals granted to Reef Cove Resort by the Cairns City Council are invalid due to conflicts with the relevant provisions of the planning scheme. A Directions Hearing was due to be heard on 6 February 2006, but was adjourned as a result of an application filed by Reef Cove Resort seeking to strike out the first ground of SOS' & CAFNEC's application and challenging the use of expert evidence in the case. SOS & CAFNEC have amended the application to address some of Reef Cove's concerns however Reef Cove have indicated that they will still seek to strike out the amended application and the use of expert evidence. Judge White will hear the strike out argument in Cairns on 3 March 2006, and the final hearing will be heard on 12 and 13 April 2006. Stephen Keim SC and Tracy Fantin are appearing for SOS & CAFNEC.

Stoney Creek Appeal – *Malcolm Beck & Ors v Cairns City Council & Heavey Lex No.116 Pty Ltd*

On 9 February 2006, EDO-NQ on behalf of a group of residents from Rainforest Estate lodged a Planning and Environment Court appeal challenging the approval of a residential and tourist development that borders Stoney Creek and the Wet Tropics World Heritage Area at Rainforest Estate, Kamerunga, in Cairns. The development proposal is for 8 residential lots and a tourist resort with 102 apartments and associated facilities. The residents contend that the development conflicts with the relevant provisions of the planning scheme, will adversely impact on critical habitat for endangered frogs and ferns, and is an area of cultural

significance to the local indigenous people, the Bulawai/Djabagay people. The case will also raise arguments about the weight to be given to new plans in regard to decisions made under transitional plans.

Breakwater Case - Alliance to Save Hinchinbrook v Environmental Protection Agency

On 9 and 10 February 2006 the Supreme Court in Cairns heard an application by the Alliance to Save Hinchinbrook (ASH) for judicial review of decisions by the Environmental Protection Agency and Queensland Parks and Wildlife Service under the *Marine Parks Regulation 1990* to approve the construction of two breakwater walls in the Hinchinbrook Channel at Oyster Point, Cardwell. ASH was expertly represented by barrister Stephen Keim SC. Judge Jones reserved his decision.

For more information about EDO-NQ cases contact us on (07) 4031 4766 or edonq@edo.org.au.

NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES

Important legal changes to...

1. Councillors to abide by Model Code of Conduct

Readers may recall from the June 2005 Bulletin amendments made to the *Local Government Act 1993* which require local governments to develop a Code of Conduct for Councillors setting out standards of behaviour and conduct for Queensland Councillors. Under those amendments, all Councils were required to adopt a Code of Conduct by 1 March 2006.

In December 2005 the State government released a Model Code of Conduct, which Councils can adopt or use as a guide and adapt to suit their circumstances. Councils with nothing in place by 1 March 2006 will automatically adopt the Model Code by default. The Model Code is based on six principles: integrity of local government, primacy of the public interest, independence of action, appropriate use of information, transparency and scrutiny in relation to financial interests, and appropriate use of entitlements.

The binding Model Code of Conduct is a welcome initiative given that Councillors vote on important environment and development issues.

The Model Code of Conduct and explanatory notes are available from www.lgp.qld.gov.au.

2. Energy efficiency encouraged for large companies - Energy Efficiency Opportunities Bill 2005 (Cth)

Readers interested in climate change and Australia's greenhouse gas emissions might be aware of the federal *Energy Efficiency Opportunities Bill 2005*, which was passed by the House on 3 November 2005 but is yet to be passed by the Senate.

The Bill requires large energy using businesses to assess the potential to improve their energy efficiency and report publicly on the assessment. However, corporations are not bound under the Bill to actually implement any energy efficiency measures identified in their assessment report.

To improve the effectiveness of this welcome initiative, EDO recommends the obligation to assess and report on the identification of energy efficiency opportunities should be extended to apply also to the Commonwealth and Commonwealth agencies, and the Bill should require *implementation* of identified energy efficiency opportunities, rather than simply requiring production of a report which is hoped will "encourage implementation of costs effective energy efficiency opportunities" (clause 4 of the Bill).

For a copy of the Bill see <http://parlinfoweb.aph.gov.au/piweb/browse.aspx?NodeID=56>.

3. New wastewater and greywater code to commence

On 1 March 2006 the *Plumbing and Drainage Legislation Amendment Regulation (No 1) 2005* will commence, giving effect to the new Queensland Plumbing and Wastewater Code governing greywater in sewered areas, which replaces the Onsite Sewerage Code. The Amendment Regulation also includes the criteria local governments must apply in granting a compliance permit for greywater use, and the relevant criteria for declaring areas to be unsuitable for greywater use.

This Amendment Regulation coincides with the commencement of the *Plumbing and Drainage and Other Legislation Amendment Act 2005*, reported in the August 2005 Bulletin, which allows homeowners in

sewered areas to divert greywater from showers, bathtubs and washing machines to their gardens via underground watering systems.

Opportunities to comment on....

The following discussion papers are currently open for public comment:

1. Senate Committee Inquiry into national parks and marine protected areas – comments due 1 March 2006

An inquiry into Australia's National Parks, Conservation Reserves and Marine Protected Areas has been ordered by the federal Senate. The Senate Environment Committee has invited public submissions by **1 March 2006** on the funding and resources available to meet the objectives of Australia's national parks, other conservation reserves and marine protected areas, including whether governments are providing sufficient resources to meet the values and objectives of protected areas and their management requirements. Written submissions including your contact details can be posted, faxed or emailed to ecita.sen@aph.gov.au.

For more information see http://www.aph.gov.au/Senate/committee/ecita_ctte/nationalparks/tor.htm.

2. Living with climate change discussion paper – comments due 3 March 2006

In mid November 2005 the Queensland government released a discussion paper on climate change and its predicted effects on Queenslanders – including warmer weather, declining rainfall, more droughts, increased bushfire risk, more intense cyclones and rising sea levels.

The Climate Smart Adaptation Paper allows the public to have a say on the future direction of climate change adaptation in Queensland. Comments received will help to shape the development of a Queensland Climate Change Adaptation Action Plan during 2006, which is intended to complement the existing Queensland Greenhouse Strategy.

Submissions are due by **3 March 2006** and should address the questions listed in the discussion paper, but can also address how people think they will be affected, what opportunities for innovation will be created and what barriers exist to adapting behaviour to these changes.

While the Paper is a welcome development in state climate change policy, there are indications that the ensuing Action Plan will not be backed up with regulatory force, but rather be a policy document recommending voluntary actions to stem climate change. In our forthcoming newsletter EDO outlines 6 main changes we think are necessary to give teeth to the Adaptation Paper and Queensland climate change policy generally, and readers are welcome to adopt any of those ideas in their submissions.

The Climate Smart Adaptation Paper is available from www.getinvolved.qld.gov.au.

3. Regulatory Impact Statement amending Marine Park Regulations – comments due 3 March 2006

In late January 2006, the Queensland Minister for Environment Desley Boyle announced proposed changes to the *Marine Park Regulations 1990* as part of its 10 year review. The Regulations cover the Great Barrier Reef Coast, Moreton Bay, Woongarra (off Bundaberg) and Hervey Bay marine parks.

Proposed changes include 10 year permits for tourism operators in identified areas within the marine parks (intended to give certainty to operators and reduce red tape), and streamlining permits for operators who visit both national parks and lesser protected marine areas so that one agreement covers the use of both areas, and improving consistency so that the Regulations apply to beaches surrounding national park islands.

*The Regulatory Impact Statement is open for public comment until **3 March 2006** and is available from www.epa.gov.au or by phoning 3227 6124.*

4. Access to justice discussion paper – comments due 17 March 2006

The Legal, Constitutional and Administrative Review Committee of the Queensland Parliament has released a discussion paper entitled "The Accessibility of Administrative Justice" seeking public comments by **17 March 2006**. The Committee will review the effectiveness of Queensland legislation providing access to information and simplified procedures for the judicial review of administrative decisions, and whether those legislative mechanisms are accessible.

The discussion paper is available from www.parliament.qld.gov.au/committee/legalrev.htm.

5. Draft State Planning Policy on affordable housing – comments due 31 March 2006

The Department of Housing with the Department of Local Government has released a draft State Planning Policy (SPP) on Housing and Residential Development and supporting guideline for public comment by **31 March 2006**.

The aim of the SPP is to ensure that planning schemes make provision for a wide range of housing options on the basis of identified existing and future housing need and increase opportunities for the delivery of housing diversity. While the focus of the draft SPP and associated guideline appear to be on affordable housing, it may be worth submitting that the draft SPP be used as an opportunity to mandate sustainable housing – in relation to housing design, location, type and density, complementing recent amendments to the Queensland Building Code made by Environment Minister Desley Boyle.

Written submissions must be signed, include the submitter's name and address, and be sent to SPP Housing and Residential Development, Director General, Department of Housing, GPO Box 690, Brisbane QLD 4001, or emailed to StatePlanningPolicy@housing.qld.gov.au.

The draft SPP is available via www.housing.qld.gov.au/initiatives/affordable/planning.htm.

6. Draft Central Queensland Regional Water Supply Strategy – comments due 31 March 2006

On 21 December 2005 the Queensland Minister for Natural Resources and Mines released a Draft Water Supply Strategy for the Central Queensland region for public comment by 31 March 2006. The Draft Strategy covers the Fitzroy Basin and nearby coastal catchments, encompassing regional centres Gladstone, Rockhampton, Yeppoon and Emerald.

The draft strategy sets out possible water infrastructure and demand management initiatives which could be adopted in central Queensland over the next 50 years. The Strategy states that it will be guided by three principles: efficiency (through water markets), efficient water use (through education and recycling) and where demand cannot be met through those means, by developing additional water supply sources using a least cost approach.

Despite those laudable principles, the Strategy makes just two references to employing efficiency, trading and demand management to meet future need. In all other instances the "options" for each sub-area within the catchment are solely infrastructure proposals, including pipelines, dams and weirs. Have your say on the Draft Strategy's failure to implement its espoused demand management techniques!

The draft strategy is available from www.cqwaterstrategy.qld.gov.au and submissions should be emailed to CQRWSS.Submissions@nrm.qld.gov.au.

7. Draft Wild River Code consultation extended by two months – comments now due 24 April 2006

As mentioned in the January 2006 Bulletin, the Department of Natural Resources and Mines released the draft Wild River Code for public comment. The consultation period has now been extended until **24 April 2006**. The Code is critical for the protection of Wild Rivers as it will provide the rules for when development such as agriculture, vegetation management and many other activities will be permitted in a wild river area. Get your comments in recommending a code with tight, clear rules!

The draft Wild River Code can be found at www.nrm.qld.gov.au/wildrivers/pdf/wild_river_code.pdf.

COMMUNITY EDUCATION

Townsville and Mackay Planning Workshops – 16, 17 & 18 March 2006

In March 2006 EDO-NQ will run workshops in Townsville and Mackay on Planning Laws and Coastal Management Plans, as well as provide general planning and environmental law advice sessions. The Mackay workshop will be held on Thursday 16 March from 5.30–8pm at the Botanic Gardens Meeting Room, Lagoon St West Mackay. On Friday 17 March from 12-2pm, EDO-NQ will hold a workshop in Townsville for North Queensland Conservation Council volunteers on Marine Parks and relevant legislation. Between 2-5pm, EDO-NQ solicitors will be available to answer any queries from the public at the Townsville Community Legal Centre at St James Place, Denham St, Townsville. There will also be advice sessions and possibly a workshop on Magnetic Island on Saturday 18 March, details to be confirmed.

For more information contact EDO-NQ on (07) 4031 4766 or edonq@edo.org.au

EDO NEWS

Farewell to EDO-NQ Management Committee Members Nicky and Nigel

The EDO-NQ bids a sad farewell to two of our long serving Management Committee members. After several years as EDO-NQ Secretary, Nicky Hungerford has resigned to take up the role of Communication/Media Coordinator with Australian Volunteers International working throughout Thailand and south-east Asia. Her dedication, enthusiasm and support have been greatly appreciated by all. Nigel Weston has also resigned as a Committee Member, to move to the Sunshine Coast and take up a position with the Caloundra City Council. During his time on the Committee Nigel has been a wealth of scientific and planning information. Both Nicky and Nigel will be sorely missed and we wish them well in their new roles.

Thankyou to EDO Qld intern Victoria Parkinson

For the past 3 months EDO Qld has had the assistance of Victoria Parkinson, a post-graduate law student undertaking her Practical Legal Training at EDO Qld to become admitted as a solicitor. Victoria has been a wonderful help to our small office and we will greatly miss her efficient and friendly presence. We wish her all the best with her legal career as she relocates to Canberra.

EDO-NQ Trivia Night – 31 March 2006

To celebrate 10 years in Far North Queensland, EDO-NQ will be holding a fundraising trivia night on Friday 31 March from 7.30pm. The event will be held at Crosswell Hall at Cairns State High School, Grafton St Cairns. Tickets are \$20.00 per person with a table of 10 costing \$140 – so get a group together and book a table now! It should be a fantastic night with some great prizes up for grabs. So come along and have some fun while supporting the EDO and maybe win yourself a prize or two!

For tickets or more information contact EDO-NQ on (07) 4031 4766 or edonq@edo.org.au

USEFUL TIPS

DEH EPBC Newsletter

Communities for Communities is a quarterly newsletter published by the federal Department of the Environment and Heritage (DEH). The newsletter aims to keep the public informed about listings and nominations made under the EPBC Act, and information and resources available on the DEH website.

The second issue focuses on ecological communities, and discusses the new approach to describing ecological communities on the basis of condition rather than composition, to exclude vegetation in poor condition. According to the newsletter, landowners will no longer have to seek approval under the EPBC Act for actions occurring on land containing degraded examples of a listed ecological community.

To access the newsletter see www.deh.gov.au/biodiversity/threatened/publications/communities-newsletter/index.html.

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

Environmental Defenders Office (Qld) Inc.

9th Floor, 193 North Quay (corner Herschel St), Brisbane 4000. Ph: (07) 3211 4466, Fax: (07) 3211 4655, e: edoqld@edo.org.au

Environmental Defender's Office of Northern Queensland Inc.

1st Floor, 96-98 Lake St, Cairns 4870. Ph: (07) 4031 4766, Fax: (07) 4041 4535, e: edonq@edo.org.au

If you no longer wish to receive our Bulletin by email, please email EDO-Qld and EDO-NQ with "unsubscribe Bulletin" in the subject line. Your email address will be removed from our database and we will not send you our email Bulletins.