



EDO BULLETIN

June 2007

In this issue:

- Updates of EDO court cases
- Environmental law and policy reform
- News, events, tips and opportunities for funding and public comment

Contents:

Victory for Karawatha Forest Protection Society	1
Opportunities for comment - Climate policies, carbon capture	1-2
Clean Coal Bill	2
NQ Court Case Updates - Stoney Creek, False Cape	2
Gunns Update	2-3
Other cases of interest	3
Community Education & Events	3
Qld Environmental Law and Policy Changes	4
Opportunities for comment - Mineral Resources Act, Population Growth	4
National & International Environmental Law and Policy Changes	4-5
Vacancy at EDO NT	6
New Australian Grown Label	6

VICTORY FOR COMMUNITY GROUP Wildlife corridor to be saved

Karawatha Forest Protection Society and EDO Qld are delighted that Brisbane City Council has finally taken steps to acquire 26 hectares of land at 193 Compton Road, Kuraby across from Karawatha Forest. The property is environmentally significant land which forms part of an important wildlife corridor including Oxley Creek and Karawatha Forest.

Since 2004, when Brisbane City Council refused a development application over the land, both Brisbane City Council and the Society have been fighting a Planning and Environment Court appeal by the developers, with the Society participating as Co-respondents by election. Thomas Creevey of the Society skilfully represented the group in numerous Court appearances over several years, with strong support from Jane Caidler. EDO Qld was not on the record but provided legal advice and assistance during that process, as did generous experts John Brannock and Ray Ison. The Planning and Environment Court case settled recently and Council has now issued a notice to resume the property.



Congratulations from EDO to the Karawatha Forest Protection Society and to all at Brisbane City Council who contributed to this result.

A toast to Karawatha Forest
EDO'S JO BRAGG (2ND FROM RIGHT) WITH RAY ISON,
JANE CAJDLER AND THOMAS CREEVEY.

NEW CLIMATE POLICIES FOR QLD Comment by 4 July 2007

In early June, the Queensland government released the *ClimateSmart Adaptation Plan 2007-12* and *ClimateSmart 2050 Queensland climate strategy*. EDO is currently analysing these documents and will provide detailed comments in our July Bulletin. The Adaptation Plan is available from:

http://www.nrw.qld.gov.au/climatechange/pdf/climatesmart_plan.pdf.

ClimateSmart 2050 is open for comment on the strategy and issues relating to climate change. Download the strategy from

www.thepremier.qld.gov.au/news/initiatives/climate/index.shtm

and email comments by 4 July 2007 to climatechange@premiers.qld.gov.au.

CARBON CAPTURE AND STORAGE DISCUSSION PAPER

Comments due 3 August 2007

The Queensland government has released a discussion paper on geosequestration – the capture and underground storage of carbon dioxide (CO₂) produced from burning coal and other fossil fuels for electricity generation. This discussion paper invites comment on a proposed legislative model to regulate geosequestration under the *Petroleum and Gas (Production and Safety) Act 2004 (P&G Act)*. The discussion paper is available from

www.nrw.qld.gov.au/mines/legislation/pdf/carbon_dioxide_discussion_paper.pdf,

Comments are due by **3 August 2007**. Comments can be faxed to 3238 3188, emailed to ccsleg@dme.qld.gov.au or posted.

CLEAN COAL BILL PASSED IN QUEENSLAND

The *Clean Coal Technology Special Agreement Bill 2007* was introduced into Queensland Parliament on 5 June and passed on 8 June 2007.

The Act establishes the Clean Coal Council which will advise the Premier on funding priorities to accelerate the demonstration, development and use of clean coal technologies.

The Act is supported by the \$910 million of public and private funding for clean coal in Queensland.

Environment groups have been critical of the amount of funding going to this unproven technology while renewable energies, which are known to work, are not being adequately funded.

Court Case News - updates from EDO NQ

STONEY CREEK APPEAL

Malcolm Beck & Ors v Cairns City Council & Heavey Lex No.116 Pty Ltd

You will recall from our February 2006 Bulletin that on 9 February 2006 EDO-NQ, on behalf of a group of residents from Rainforest Estate, lodged an appeal in the Planning and Environment Court at Cairns.

The appeal challenged the approval by Cairns City Council of a residential and tourist development that borders Stoney Creek and the Wet Tropics World Heritage Area at Rainforest Estate, Kame-runga, in Cairns.

This matter has now been set down for hearing from 3 to 5 September 2007 before His Honour Judge White.

False Cape Update - EPA Access Appeal Refusal

Reef Cove Resort v Environmental Protection Agency & Cairns City Council

Reef Cove Resort Pty Ltd is appealing in the Planning and Environment Court at Cairns against the Environmental Protection Agency's (EPA) decision to refuse access to the False Cape development through the nature reserve. This matter was originally set down for hearing from 4 to 7 June 2007 but has since been adjourned due to the developer making late changes to the proposed road access alignment. The matter is now set down for hearing from 6 to 9 August 2007 before His Honour Judge Dodds.

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

Other Cases of Interest

GUNNS 20 (15) UPDATE + CHALLENGE TO GUNNS PULP MILL

Readers will recall from earlier Bulletins the case woodchippers Gunns Ltd brought against 20 anti-logging activists claiming millions of dollars of damages in lost profits. Last year the company was forced to drop charges against five of the defendants, including Greens Senator Bob Brown, after the Victorian Supreme Court found that claims against those defendants were unintelligible and embarrassing.

In the latest development, Gunns has now been given a fourth bite of the cherry, with orders made by the Court on 3 April 2007 allowing Gunns to file a fourth version of the statement of claim against the remaining 15 defendants. The defendants filed their defences

in early May 2007, but the trial is not expected to be heard until 2008.

For more information or to donate to help the remaining defendants, visit <http://www.gunns20.org/>.

Readers may recall that in 2005, EDO Qld acted for The Wilderness Society (TWS) in a Federal Court challenge to Gunns Ltd's pulp mill in Northern Tasmania. That case was discontinued after Gunns withdrew the EPBC referral to the Commonwealth government and lodged a fresh referral. The proposed pulp mill would

(Continued on page 3)

(Continued from page 2)

consume millions of tonnes of native forests, and logging to feed the mill would destroy the habitat of rare and threatened species such as the wedge-tailed eagle and spotted tail quoll.

TWS is now back in the Federal Court in Tasmania arguing that the federal Environment Minister contravened the EPBC Act in relation to the fresh referral by

allowing Gunns to withdraw from an independent inquiry and instead face a much less rigorous assessment process.

The claim was filed in Hobart's Federal Court in mid May 2007.

For more information on this case, see www.wilderness.org.au/campaigns/forests/tasmania/

Hefty fine for illegal fishing in Kakadu National Park

A Darwin magistrate has fined a commercial fisherman \$8,750 and ordered the forfeiture of fishing dinghies and crab pots valued at between \$10,000 and \$20,000 for illegal fishing in Kakadu National Park.

His Honour Mr Wallace SM found Barry William Johnston guilty of seven charges under the Commonwealth EPBC Act and one charge under the Fisheries Act (NT) for offences committed over a week in late October and early November 2006.

Prosecutor Catherine Hamilton from the Commonwealth DPP told the court that a recreational fisherman had tipped off park wardens about a large illegal crabbing operation in the creeks of Field Island. After aerial surveillance by helicopter, park wardens seized more than 100 baited crab pots, a spear, three nets, and 47 shark fins. A number of mud crabs were released back into the creeks.

This case summary was written by the Commonwealth Department of Environment.

Queensland State government call-in protects coastal Kin Kin from tourism development

The State government has used its planning powers to call-in a proposed tourism development on the Sunshine Coast and reject it because it breached the SEQ Plan.

Noosa Shire Council refused approval for the \$400 million hotel, villa, golf course and conference centre development in Kin Kin, known as The Edge, because it contravened Noosa's planning scheme and was rural land outside the urban footprint set by the Regional Plan.

The developer, Titanium Enterprises, challenged Council's decision in the Planning and Environment Court but the Deputy Premier, Treasurer and Minister for Infrastructure Anna Bligh used powers under the *Integrated Planning Act* to call-in the development and refuse it, because the SEQ Plan allows for only smaller scale tourism facilities in the Noosa hinterland. The state government's call-in and decision cannot be challenged and will end the developer's Court appeal.

Community Education and Events

EDO-QCC climate change legal seminar a success

EDO Qld and Qld Conservation Council's joint climate change seminar in early May 2007 was a great success. The half-day seminar examined the legal responsibility for greenhouse gas emissions from coal mined in Queensland. The seminar was designed to inform coal industry professionals and their lawyers of the basis for climate change litigation in Queensland and the legal concepts relevant to attributing liability for emissions from coal mined in Queensland.

Thanks to all the excellent speakers, who gave informative and engaging presentations: Professors Ian Lowe and Doug Fisher, barrister Chris McGrath, carbon trading expert Nicola Durrant, and QCC Coordinator Toby Hutcheon. EDO's Anita O'Hart ably chaired the seminar.

The seminar was attended by planning and environmental lawyers, planners involved in environmental assessment, government officers and members of the public interested in climate change litigation. Well done to EDO's Anita O'Hart and QCC's Jeff Poole for

organising this important event!

To purchase a copy of the papers from the seminar, please contact EDO Qld on edoqld@edo.org.au.

CAFNEC Envirofiesta 4 August 2007

Cairns and Far North Environment Centre (CAFNEC) is organising the Envirofiesta, the biggest community arts and environment festival in North Queensland. This year's theme is Go Green and CAFNEC will be showcasing a range of products and ideas that help us improve our quality of life whilst reducing our environmental impacts.

Envirofiesta 2007 is on Saturday 4 August 2007 at Little Street Park (Cnr Little and Greenslopes), 10am to 10pm. There is a \$5 entry fee, with kids under 15 free. Activities include market stalls, kids space, live music into the evening (over 12 bands), delicious food, raffles, a 17 km bike ride, films, community stalls and a whole lot more.

For a copy of the program or info on how to get involved, see <http://www.envirofiesta.cafnec.org.au>

QLD ENVIRONMENTAL LAW AND POLICY - Recent Changes

Water supply emergency actions can ignore planning laws

In an effort to ensure Queensland's new water infrastructure projects are completed on time, the State Development *and Public Works Organisation Regulation* was amended in mid June 2007 to allow the Coordinator General to take sand, stone and gravel from the now dry Wivenhoe Dam and use it as material for the water supply emergency project works, without needing to comply with the normal planning laws.

This is yet another by-pass of environmental and planning laws to deliver the water projects on time, which also lock out the community from having a say on those works.

State to take over Council water powers

The state government is pushing ahead with a new water management structure whereby the State will operate the larger water assets that hold, manufacture (desalination and recycled) and distribute bulk water in South East Queensland, instead of local Councils, who will be compensated for the loss of their assets.

Councils will manage the retail and distribution of water, through a jointly owned single distribution entity responsible for the domestic pipe network, pumping stations and three retail companies. A new statutory authority will be created to manager the SEQ Grid, which will be responsible for the equitable distribution of water from the State-owned assets to the council-owned companies. This will include the ability to transfer water to where it is needed most in times of drought. The Grid Manager will be obliged to ensure that all regions have appropriate access to water and that proper maintenance is undertaken.

A report from the Qld Water Commission in late May 2007 identified that SEQ currently has 22 bulk water assets, owned by 12 different bodies, and 17 water retailers - made up of 25 different water entities with different approaches to managing water. The proposed reforms bring Queensland into line with other Australian mainland States, where delivery of water is responsibility of State Governments.

No legislation has yet been tabled in Parliament, and Councils have until November 2007 to put their views to the Queensland Water Commission on the structure of their proposed businesses. State government envisages that some of the new businesses will be up and running by 1 October 2008, and the entire reform process will be in place by 1 July 2009. Recently, the state reached agreement with Brisbane City Council to transfer BCC assets (including its 45% share of SEQ Water, water treatment plants and wastewater plants) to the state starting from 1 July 2008. This will give the State majority ownership of Wivenhoe, Somerset and North Pine dams systems.

Water Resource Planning – Cubbie Station guzzles and Border Rivers flow reduced

The Border Rivers Water Resource Plan was amended in June to facilitate inter- and intra-state trading of water allocations.

The amendments reduce the amount of environmental flows necessary for end-of-system flow (from 61% to 60.8%), and prevent decisions which would cause a reduction in the security of water entitlements of a water allocation group.

The draft Condamine-Balonne ROP was open for public comment until 22 June, covering a large slice of southern Qld from Toowoomba to Roma down through St George to the NSW border.

These rivers supply a significant inflow to the Darling but, according to recent reports, flows have been cut by more than 50%, leaving Darling wetlands in drought.

EDO was alarmed that the draft ROP gives almost 10,000 ML of water per day to the infamous private water storage and irrigation scheme, Cubbie Station, an amount which dwarfs all other allocations under the draft ROP.

This seems incongruous to the ban on water harvesting by irrigators implemented from early June 2007 onwards in the Condamine catchment, in an attempt to replenish Darling Downs town water supply and ensure the 'wetting up' of the river.

Extractive Industries State Planning Policy finalised after 3 years

A new State Planning Policy (SPP) on the Protection of Extractive Resources and a supporting Guideline was adopted on 8 June 2007, and will come into effect on 3 September 2007.

The Extractives SPP identifies extractive resources of State or regional significance where extractive industry development is appropriate in principle, and protects those resources from developments that might prevent or constrain current or future extraction.

The Extractives SPP has been proposed since 2004, and a draft was first put out for public comment in December 2004.

Conservation groups were widely critical of the draft SPP for overriding protection for important koala habitat. EDO will be examining the finalised Extractives SPP in detail.

The SPP is available at www.nrw.qld.gov.au/mines/land_tenure/pdf/dme_stateplan_policy.pdf.

OPPORTUNITIES TO COMMENT

The following Government initiatives are currently open for public comment:

Mineral Resources Act review – comments due 17 August 2007

The *Mineral Resources Act 1989*, Queensland's main mining legislation, is under review. A discussion paper has been released for public comment by 4:30pm on 17 August 2007, and is available from www.nrw.qld.gov.au/mines/legislation/pdf/mra_discussion_paper.pdf.

Comments will inform amendments to the Act, and a draft Bill will also be subject to consultation prior to tabling in Parliament. Submissions can be sent by email to minlegreview@dme.qld.gov.au, fax to 3238 3188, or by post.

EDO's quick look over the discussion paper has revealed no mention of greenhouse gases and only two references to climate change in the entire document. EDO will make a submission calling for companies to be made responsible for the greenhouse gas emissions generated from coal mined in Queensland, and encouraged to avoid, reduce or offset those emissions. We will also call for public notification of mining lease applications to be made available online.

Petition - Population growth in South East Queensland

The state government's SEQ Regional Plan set a population 'target' of 3.96 million people for the region by 2026, up by almost 1.2 million. Local Governments are required to prepare "Local Growth Management Strategies" (LGMS) which identify where development will occur to meet Government growth targets.

Yet these 'targets' are simply population projections based on past patterns of urban development, not an assessment of the ecological carrying capacity of the SEQ Region. Local councillors and environment groups are supporting this petition, calling for comprehensive public consultation on growth targets and for delaying the LGMS process until after the current council amalgamation plans and subsequent elections are completed.

If you are concerned about SEQ's sustainability and your way of life, sign the Parliamentary e-petition at www.parliament.qld.gov.au/view/EPetitions_qld/CurrentEPetition.aspx?PetNum=837.

ENVIRONMENTAL LAW AND POLICY

Recent National & International Changes

National policy on greenhouse gases, chemicals management and World Heritage

The Environment Protection and Heritage Council (EPHC) is made up of ministers from all states and territories, as well as the Australian, New Zealand and Papua New Guinea governments. At the 15th meeting of the EPHC in Cairns on 2 June 2006, Australian environment ministers agreed to a communiqué covering a range of issues, including action on:

- **Greenhouse gases.** The Ministers agreed to include transfer of wastes and greenhouse gas emissions in the National Pollutant Inventory (NPI) National Environmental Protection Measure (NEPM), pending the establishment of a national special greenhouse reporting mechanism (which the Australian government favoured waiting for, rather than amending the NPI NEPM). The NPI has been in place for 8 years tracking emissions of substances to air, land and water.
- **Chemicals management.** Environment Ministers signed an agreement to improve environmental

aspects of chemical management, such as promoting the safe and sustainable production and use of chemicals in Australia. Ministers also agreed to a Chemicals Action Plan to enable a better government response to chemical issues and to enable environment agencies to better identify and effectively manage the environmental impacts of industrial chemicals.

- **World Heritage 'Tentative List'.** The EPHC agreed to support the preparation by the Australian Government of a new Australian World Heritage 'Tentative List' for consideration over the next ten years. The Australian Government agreed to host a workshop in late 2007 to discuss possible nominations and themes with states and territories, in order to develop a full inventory of heritage places of outstanding universal value that Australia will consider putting forward to the World Heritage Committee over the next ten years. The Council agreed that places to be considered for inclusion on the Tentative List would include suitable areas of **Cape York**.

The EPHC communiqué is available from http://www.ephc.gov.au/pdf/EPHC/Comm_02_06_07.pdf.

Minor parties seek federal laws for government accountability and whistleblower protection

On 14 June 2007, Democrats Senator Andrew Murray introduced the *Public Interest Disclosures Bill 2007* into the federal Senate. The Bill aims to set up a transparent framework to protect public officials and others who disclose information in the public interest, generally known as whistleblowing, and to ensure there are strategies to resolve incidents of administrative misconduct.

Whaling ban upheld by UN

The ban on commercial whaling was confirmed at the UN *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) meeting on 6 June 2007. Japan had sought support to review the prohibition of commercial trade in large whales, with the ultimate aim of resuming commercial whaling by bypassing the moratorium on commercial whaling maintained by the International Whaling Commission (IWC) since 1986. Anti-whaling nations were also successful in defeating all pro-whaling proposals ('scientific whaling' and 'coastal whaling' - commercial whaling by stealth) at the IWC meeting in Anchorage in early June 2007.

EDO NEWS

Lawyer needed at EDO Darwin

The EDO (NT) has a vacancy for a principal lawyer, to start as soon as possible. The successful applicant will be eligible to hold an unrestricted practising certificate, be competent in legal research and providing high-level legal advice, have good oral and written communication, broad practice experience (ideally including environmental law), and an ability to work autonomously in a small office. Experience in the provision of public education, working with relevant government and non-profit organisations, and working to a management committee, would be an advantage.

Applications are due by 29 June 2007. For copies of the selection criteria and position description, contact Greg Macdonald on (08) 893 57847.

International climate change developments - G8 makes a start

Six of the world's eight largest industrialised nations agreed on 7 June 2007 to at least halve global carbon dioxide emissions by 2050 as part of a United Nations process. The United States and Russia were the only G8 holdouts.

As a compromise, all eight nations (Canada, UK, European Commission, France, Russia, Japan, Germany, Italy and U.S.A.) agreed to "seriously consider" halving greenhouse gas emissions by 2050, but did not state a numerical global target.

The leaders said it was vital that all major emitting countries agreeing on a global framework by the end of 2008 which would form the basis of a new agreement under the Climate Change Convention by 2009, covering all major emitters once the Kyoto Protocol stage 1 ends in 2012.

The G8 leaders also announced support for integrating environmental standards into the extractive industries, and progress in controlling the proliferation of weapons and materials of mass destruction.

The next G8 Summit will be in Japan in July 2008.

USEFUL TIPS

Look for the new "Australian Grown" label!

The federal government has launched a new 'Australian Grown' logo, to enable consumers to identify packaged food that has been grown on Australian farms and virtually all of the processes involved in production have occurred in Australia.



Do your bit for climate change and our economy and buy Australian Grown!

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To subscribe free to the EDO NSW Bulletin, (covering Cth and NSW issues) please send an email to edonsw@edo.org.au

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