

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

BULLETIN

March/April 2006

What's in this Bulletin?

This bulletin is brimming with news of EDO Court cases on flying foxes, koalas, cassowaries, Hinchinbrook breakwater and False Cape. We update you on the review of the Integrated Planning Act, where your EDOs are taking a lead, tell of EDO successes in gaining amendments to the IPOLA Bill passed on 30 March 2006 and mention the EDO's submission supporting changes to Local Government Electoral Processes. Several Queensland judgements concerning illegal land clearing and removal of illegal jetty construction are outlined. The draft Mackay-Whitsunday Regional Coastal Plan is out for comment, until 16 June 2006.

Did you know that the Mackay City Council has adopted a new planning scheme and that Minister Boyle and the Cardwell Shire council have cooperated to bring into force a Temporary Local Planning Instrument? Minister Boyle has also made decisions on two developments she called in, with Attunga Heights, Noosa to go ahead but Buchan's Point, Cairns refused. The due date for Envirofund grants applications has been extended for some applicants to 19 May 2006.

COURT CASE NEWS

Case update from EDO-Qld

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

On March 17 2006 the Supreme Court of Appeal upheld an appeal by conservationist Dr Carol Booth against a judgment that would have allowed farmers to kill wildlife for crop protection without a permit. The three Justices of the Court of Appeal have ordered a retrial of *Booth v Frippery Pty Ltd & Ors* in the Planning and Environment Court. See EDO Alert! 17 March 2006 for more details.

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".

2. Koala cases in the Planning and Environment Court

EDO Qld is assisting with two appeals for development applications lodged in 2004. Both sites, situated in the Redland Shire, are important koala habitats and are on rural non-urban land. There are strong planning and environmental arguments against the proposed developments based on the then-in-force Redland Planning Scheme and State Planning Policy 1/097 Conservation of Koalas in the Koala Coast.

The cases are:

The Wildlife Preservation Society of Queensland Bayside Branch Inc. v Redland Shire Council & Heritage Properties 312 of 2006 concerning 401 Redland Bay Road, Capalaba.

Gregory Gibbards v Redland Shire Council & Carndale Pty Ltd and Ors 773 of 2006 concerning a site at 678-794 German Church Road, Redland Bay.

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*

EDO-NQ is acting on behalf of SOS and CAFNEC who have filed an application seeking declarations that approvals issued by the Cairns City Council to Reef Cove Resort Ltd in relation to a residential

development at False Cape are invalid. Readers may recall from the February 2006 Bulletin that Reef Cove Resort filed an application to strike out part of SOS and CAFNEC's application and challenge the use of expert evidence. The strike out application was heard before Judge White in the Planning and Environment Court at Cairns on the 3rd March 2006. SOS and CAFNEC were expertly represented by Stephen Keim SC and Tracy Fantin. Judgement has been reserved but a decision is expected shortly.

Cassowary case - Community for Coastal & Cassowary Conservation v Johnstone Shire Council & Cavanah

Readers may recall from previous Bulletins that the EDO-NQ acted for the Community for Coastal and Cassowary Conservation Inc (C4) who lodged an appeal against the decision of the Johnstone Shire Council to approve a 22 lot residential subdivision in the rural conservation zoning at Mission Beach. The case was heard in the Planning and Environment Court in Cairns over 4 days, commencing on the 3rd of April 2006. Barrister Chris McGrath did an excellent job appearing on behalf of C4. Judge White reserved his decision and a judgement is expected shortly.

Hinchinbrook Breakwaters Case – Alliance to Save Hinchinbrook v Environmental Protection Agency

As reported in the February 2006 Bulletin, 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. Unfortunately ASH's application was dismissed. ASH claimed that in approving the breakwater walls the EPA had failed to consider a number of impacts of the walls on the area and its wildlife, including the increased risk of boat strikes on dugongs. However Justice Jones found the issues raised by ASH had been adequately addressed by the decision maker and then dismissed the application.

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

LAW REFORM NEWS

Integrated Planning Act Review

Both EDO QLD and EDO-NQ attended an IPA Review Summit held by the Minister for Environment, Local Government, Planning and Women, Ms Desley Boyle on the 14th March 2006 as outlined in the EDO Alert! issued in March. The EDOs argued that any real review of IPA needed to address two core issues – is the system fair to members of the community and is IPA achieving its purpose of ecological sustainability? The EDOs and Queensland Conservation prepared a joint submission proposing a large number of amendments to IPA. The submission was well received and we have had further consultation with the Department of Local Government and Planning. We have also gained media coverage in the Courier mail (letters 21 March & opinion piece p21 24 April 2006) and local press.

A draft options paper will be released later in the year for public comment. EDO Qld with support of your donations, has employed Anita O'Hart as Solicitor and Project officer to work on this important review.

For more information contact the EDO offices. The submission is on our websites.

IPOLA Act Commences – EDO's changes incorporated!

On 30 March 2006 the Integrated Planning and Other Legislation Amendment Act (IPOLAA) was passed by Parliament after being introduced by Minister Boyle on the 7 March 2006. EDO Qld successfully lobbied for 2 changes to the Bill to protect the public interest and the environment, with the following incorporated:

- a) A provision to maintain a 30 day notification period to the public, for the types of major development applications that previously required "referral coordination". Referral coordination was a consolidated information request to the developer including information requested by various agencies. It is important that the community has sufficient time to respond to developments so that improvement is important.
- b) Removal of the proposed definition of 'public interest', which emphasized needs and economic interest above natural environmental interest and down played the importance of the planning

scheme, codes, laws and policies. This is important to avoid the economy further dominating decisions on development applications.

The IPOLAA also introduces a number of amendments including the requirement for Councils to publish reasons on their website for a decision that departs from the planning scheme and allowing Councils to depart from their planning schemes only for the public interest, not for the interest or benefit of an individual. The IPOLAA also clarifies timelines for approvals and lapsing of development approvals and removes the referral coordination process. Local Councils have also been given increased powers to deal with sediment and erosion problems and environmental nuisance on development sites with the abolishment of show cause notices for these offences. This means Councils will be able to take an enforcement action immediately rather than waiting for 2 weeks for the show cause notice to expire.

Local Government Electoral Reform

On 1 March 2006, EDO Qld & NQ made submissions in response to a discussion paper by the Department of Local Government and Planning, 'Ensuring accountable and transparent local government elections'. EDOs submission supported the Department's proposal to bring local government elections into line with the state government election. However EDOs submission urged the Department to go beyond the current State standards and to end the excessive influence of developers over council. This included a need to improve openness and accountability, such as the amount and source of any funds or donations a councillor receives, the public notification of councillors who declare a 'material interest' and if and how a councillor voted on a matter before council. Other suggested improvements included public notification on the amount of councillors' spending on campaign advertising, and a possible cap on this amount. An increase in penalties and prosecution of councillors for electoral fraud and deceit was also encouraged by the EDOs.

For more information contact the EDO offices. The submission is on our websites.

Other cases of interest

1. Court confirms Queensland's Natural Resource Laws apply to all

Two recent decisions of the District Court confirm that Queensland's laws regulating natural resources apply to both freehold and leasehold land within the State. Keith Ronald Glasgow was found guilty of clearing remnant vegetation in the Biloela Magistrates Court on 16 February 2005 and fined \$10,000 and ordered to pay costs amounting to nearly \$16,000. He appealed against the conviction in the Rockhampton District Court asserting that the law under which he was convicted, the Vegetation Management Act, was unconstitutional and it did not apply to freehold land. Shane Andrew Watt lodged a similar appeal in the Bowen District Court after being found guilty of excavating a watercourse on 27 October 2005 and fined \$4000. Both appeals were dismissed with both Judges saying there is no doubt that the Queensland Government can regulate matters such as vegetation clearing, excavating in a watercourse and destruction of vegetation in a watercourse.

2. NRMW & EPA involved in successful prosecutions

On 11 April 2006 a landholder pleaded guilty in the Charleville Magistrates Court to 3 charges of illegally clearing 143.8 hectares on a road reserve and 2 charges of clearing more than 906.7 hectares of remnant vegetation on his own property near Morven. He was fined over \$15,000. The clearing was done for fodder harvesting under the mistaken belief that such clearing fell under a "fodder" exemption. Although some exemptions still exist for management practices, fodder harvesting is no longer one of them and landholders require a permit to clear remnant vegetation for this purpose. The EDO's congratulate the Department of Natural Resources & Mines & Water (NRMW) for taking action to deter landholders from clearing vegetation or excavating in watercourses without the proper authorisations in place.

Recently the Environmental Protection Agency went to court to defend its right to dismantle an illegally constructed jetty at Russell Island, in Moreton Bay. The jetty was built a number of years ago through a protected mangrove wetland of Moreton Bay Marine Park without the necessary approvals. Residents of

the area recently upgraded the jetty, also without approval. The EPA served a notice on the residents to remove the jetty, however they only removed new illegal works. The EPA then served a second notice demanding the removal of the original jetty as well. The residents appealed to the Cleveland Magistrates Court claiming they had a right to maintain access to the jetty. The Court disagreed and dismissed the appeal allowing the EPA to remove the jetty as the construction of private facilities such as jetties, pontoons and boat ramps in the Marine Park were not supported anywhere within the area due to the important amenity and conservation values of the area. The EDOs applaud the EPA's action in protecting and preserving the natural values of the Moreton Bay area.

Opportunities to Comment On....

The following discussion papers are currently open for public comment:

1. Draft Mackay- Whitsunday Regional Coastal Management Plan – comments due **16 June 2006**

The draft Mackay-Whitsunday Regional Coastal Management Plan was released for public comment on 20 March 2006. The plan covers the coastal catchments of the Whitsunday, Mackay and Sarina local government areas and proposes a coastal management district. It also includes coastal building lines to ensure that building doesn't occur in areas prone to impacts from natural events, such as erosion. The plan aims to protect and manage coastal values through managing the adverse impacts of urban growth, tourism and industry. A number of information sessions will be held in early May to provide the public with more information on the draft plan. Public submissions on the draft plan are due on **16 June 2006**.

For more information or for a copy of the draft plan contact the EPA on 1800 501 436 or visit their website at www.epa.qld.gov.au

NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES

1. Cardwell Temporary Planning Instrument Commences

A Temporary Local Planning Instrument (TLPI) dealing with Population Densities was adopted by the Cardwell Shire Council on 2nd March 2006 after being approved by the Local Government Minister. The TLPI overrides the current Cardwell Shire Planning Scheme in relation to applications for subdividing land in the Conservation zone and applications for multiple and duplex dwellings. The TLPI increases lot sizes in the conservation zone reducing the number of houses that are able to be built in these areas thereby increasing protection for important habitat for the endangered cassowary and mahogany glider. The TLPI also introduces measures to allow Council to better regulate the design and reduce the density of multiple and duplex dwellings. The EDOs congratulate Cardwell Shire Council for recognising the importance of the natural environment and the "rural" character of the Shire and protecting these irreplaceable assets through the implementation of the TLPI.

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

2. Attunga Heights Development to go Ahead but Buchan's Point Refused

Planning Minister Desley Boyle has approved the controversial Attunga Heights development at Noosa reinforcing the 125 conditions imposed by Council and adding a few more. The Minister exercised her powers under the *Integrated Planning Act* and "called in" the development late last year. The new conditions increase the wildlife corridor linking the Noosa National Park to the Noosa River and Lake Weyba from 28 metres to 50 metres. They also require the removal of two buildings from the planned development and the relocation of two others to outside the new wildlife corridor. The Minister believes the new approved development achieves a balance between protecting the environment and providing development in a growing Shire.

Late last year the Planning Minister also "called in" a development that was approved for Buchan's Point, a rocky headland just north of Cairns. The Minister has refused the two six storey multi-unit developments that were proposed for the site due to conflicts with the Coastal Management Plan. The area is protected under the Coastal Management Plan which specifies that development at Buchan's Point should have "minimal coastal visual impact especially when viewed from the sea". Buchan's Point is a prominent headland that forms part of the long stretch of untouched beaches and headlands along

the Wet Tropics Coast and is the most prominent cliff at the southern end of the spectacular drive between Cairns and Port Douglas. This is one of the very few times that the Coastal Management Plan has been used to stop an inappropriate development and the EDO-NQ congratulates the Minister for her commitment to protecting such an environmentally and visually important area.

3. Mackay's Planning Scheme Commences

Mackay City Council adopted their IPA Planning Scheme on 24 March 2006 after it was approved by the Local Government Minister on 20 March 2006. The scheme aims to protect the economic, cultural and environmental future of the city. Mackay's population is expected to reach nearly 90,000 by 2011 and the scheme concentrates urban growth in Mackay and surrounding towns rather than sprawling throughout the region and threatening the viability of the area's agricultural land and key environmental areas. Rural residential subdivisions will be confined to specific areas and have a minimum lot size of 100 hectares.

COMMUNITY EDUCATION

EDO-NQ conducted a very successful planning and environmental law workshop in Mackay on Thursday 16th March 2006. The workshop was very well attended and dealt with a number of issues currently facing the community in Mackay and surrounding areas. On the 17th March 2006, EDO-NQ held a workshop for volunteers of the North Queensland Conservation Council (NQCC) in Townsville as part of NQCC's Coral Seas campaign. While in Townsville EDO-NQ also attended the Townsville Community Legal Centre and provide advice to a number of clients on environmental and planning law issues.

EDO NEWS

EDO-NQ Trivia Night

Thankyou to all those who came along to the EDO-NQ trivia night held on 31 March. The evening was a huge success with well over 150 people attending. Lots of money was raised to help support the EDO-NQ and a great night was had by all.

USEFUL TIPS

Envirofund Applications Still Open to Some

Applications to the Commonwealth Government's Envirofund closed on 28 April 2006, however a 3 week extension to **19 May 2006** has been granted to applicants in the Qld Wet Tropics and Northern Gulf regions affected by Cyclone Larry or to those who have been affected by the recent floods in the Katherine region of the Northern Territory. The fund provides grants of up to \$50,000 to provide the opportunity and means for community groups to undertake small on-ground projects tackling important local problems and to assist community groups to engage effectively in broader regional approaches to natural resource management. If you are eligible for the extension, you must note it in your application.

For more information and details of eligible projects see the Envirofund website at www.nht.gov.au/envirofund/index.html

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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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