



EDO BULLETIN

May 2007

*This issue covers
March to May 2007,
including*

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

Contents:

<i>Climate Change case appeal</i>	1
<i>Waterway Protection Appeal</i>	1
<i>Granite Quarry</i>	1
<i>Palmer mine rehabilitation</i>	2
<i>MacArthur River Mine</i>	2
<i>Law Reform - Local Govt Act Review</i>	3
<i>FNQ News</i>	3
<i>Useful tips - EPBC report</i>	3
<i>Community education & events</i>	4
<i>Environmental Law & Policy changes</i>	4-5
<i>Marine & Tropical Research advisory body</i>	5
<i>Opportunities to comment</i>	5-6
<i>Funding Opportunity</i>	6

CLIMATE CHANGE Coal Mine Appeal QCC v Xstrata

In the first ever climate change case to be heard by the Queensland Court of Appeal, the Queensland Conservation Council, represented by EDO Qld, will appeal the decision of the Land & Resources Tribunal. Readers will recall from our February bulletin that QCC argued in the Land & Resources Tribunal that a mining lease application brought by Xstrata Coal and others should not be approved unless conditions are imposed requiring Xstrata to avoid, reduce or offset its greenhouse gas emissions.

The appeal to the full court of the Court of Appeal is based on a number of grounds including breach of natural justice and mistake of law. The appeal will be heard by the Queensland Court of Appeal on 9 August 2007.

For more information about the appeal, see <http://www.envlaw.com.au/greenhouse.html> or contact EDO Qld.

Waterway Protection Appeal Lavis v Mareeba Shire council & Ors

The hearing for this Planning and Environment Court appeal in Cairns had been set down for hearing from 12 to 15 June 2007 before His Honour Judge White. However, due to the developer making late changes to the development proposal, the hearing has been adjourned to be heard over 5 days commencing Monday, 10 September 2007.

You will recall that EDO-NQ are acting for the Mitchell River Watershed Management Group Inc and nearby farmers who have co-responded to an appeal by D & R Lavis Waste Disposal for a material change of use application to pasteurise grease trap waste, chicken litter and other solids then use that as a soil conditioner on land at Dimbulah.

Granite Quarry - Behana Gorge

EDO-NQ is assisting local residents of Behana Gorge to clarify with the State Government whether the gorge will be included as a Key Resource Area ("KRA") in its State Planning Policy (SPP) in relation to extractive industries. Both the residents and the Cairns City Council oppose such a proposal.

Mining Lease on Palmer property - Failed rehabilitation

EDONQ is assisting a landowner at Palmer, Cape York whose property is the subject of a mining lease. The miner has failed to comply with the Code of Environmental Compliance for Mining Lease Projects ("the Code") by failing to rehabilitate the mining affected sites on the property appropriately; failing to maintain the existing water courses; and failing to retain sand, gravel, rocks, tailings and other mine debris.

The miner's non-compliance with the Code has caused a number of adverse environmental impacts on the landholder's property and downstream, including changes in stream flows; stream material deposition and sedimentation; reduced water quality for wildlife and stock; reduced water holes for wildlife and stock; dispersion of weeds; and deposition of sand and slurry downstream of the mining.

Despite numerous complaints over the past several years by the landowner to the Environmental Protection Agency ("the EPA"), this environmental disaster has been allowed to continue. The EPA has conducted several site inspections and has found the miner to be in non-compliance with several of the conditions under the Code, yet there has been no satisfactory rehabilitation undertaken by the miner on this property. Not only does this non-compliance have serious ramifications for the environment on



the property, but there are concerns for the adverse environmental impacts which have, or will, occur downstream as the property's river system flows into the Palmer River, which is part of the Mitchell River Catchment Area. EDONQ is assisting the landowner to demand that the EPA enforce compliance on the miner and have this environmental disaster rectified before further environmental harm results.

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

OTHER CASES OF INTEREST.... MacArthur River Mine, Northern Territory

A group of traditional Aboriginal land owners has won a bid to overturn the Northern Territory government's approval for the expansion of a major zinc mine.

The controversial project would have transformed the MacArthur River Mine from underground to open-cut mining by diverting the river near the Gulf of Carpentaria by 5.5 kilometres.

The mine's owner, Swiss mining company Xstrata, was given approval for the \$110 million expansion by the NT government in October last year.

But the Northern Land Council (NLC) mounted a legal challenge on behalf of the traditional owners, arguing the government had failed to follow proper procedures under the Mines Management Acts.

EDO NSW and EDO NT provided ongoing assistance in this matter.

In the Northern Territory Supreme Court in Darwin on Monday [date?] Justice David Angel ruled in favour of the traditional owners, finding that as the original mining authorisation and application was for underground mining, therefore the Minister could not consider amending the mining plan to include open cut mining as it was not within the scope of the authorisation.

The decision was widely celebrated for demonstrating mining companies are not above the law. However, the Northern Territory Government subsequently passed special legislation to allow the expansion to go ahead.

LAW REFORM NEWS

Comments on the Local Government Act review

In April, EDO Qld provided comments on the review of the *Local Government Act* to the Department of Local Government, Planning, Sport and Recreation. We noted that:

- the obligation on councils to consider environmental impacts, including climate change implications, should be restored;
- the Act should provide for public enforcement of breaches of a local law and the Act itself;
- public access to registers of interests should be expanded, as should the information which must be included on those registers;
- we support the proposed clarification of the meaning of 'conflict of interest', and the proposed requirement of full declarations of such conflicts in council meetings;
- publishers and advertisers should be required to lodge returns detailing payments made by councillors or parties for political advertising;
- a cap should be imposed on election campaign expenditure, to remove the incentive for candidates to cultivate wealthy donors in order to compete with opponents;
- penalties for electoral fraud should be increased to removal from office and disqualification from future candidacy;
- proportional representation should be introduced for council elections; and
- we welcome the introduction of the Councillors' Code of Conduct, and recommend that its use be examined. We support the proposed code of conduct for candidates, and recommend that it be mandatory.

FNQ NEWS

Daintree – 9th Property Purchased and Protected!

A property has been saved through the Daintree Buy Back and Protect Forever Project.

The Lot in Cape Tribulation is covered in lowland tropical rainforest and the protection of the property protects several threatened ecosystems.

Rainforest Rescue is now liasing with the EPA to have the land declared a Nature Refuge.

The purchase and protection of the property not only saves this precious rainforest it also prevents further impact from development.

To help Rainforest Rescue and the Daintree Buy Back & Protect Forever Project, please phone 1300 763 611.

Youth Environment Council (YEC) Congratulations Miranda Allayialis

Recently, the Minister for Environment and Multiculturalism, Lindy Nelson-Carr, and the Minister for Education, Training and the Arts, Rod Welford, called upon the youth of today to form the Queensland Youth Environment Council (YEC).

Miranda Allayialis, EDO NQ's volunteer legal officer, was selected to be on the YEC, which comprises 30 young people (aged between 16 and 25 years) from across the State to consider and provide advice to the Queensland Government on specific environmental and sustainability issues.

Miranda is completing her final year of a Bachelor of Laws degree at JCU and is also undertaking her Graduate Diploma of Legal Practice at ANU. We wish Miranda all the best in her new role as a member of the YEC.

USEFUL TIPS

Environment Protection and Biodiversity Conservation Activity Report - 30 June 2006

The report covers referrals, assessments and approval decisions. It categorises them by state, matter of national significance and industry sector. A very interesting read for anyone concerned with the overall application of the EPBC Act. For example, only 16 forestry and agriculture referrals have been declared controlled actions.

See: <http://www.environment.gov.au/epbc/statistics/pubs/epbc-activity-report.pdf>

COMMUNITY EDUCATION AND EVENTS

“Climate Change Adaptation for Planning Practitioners” – PIA.

On Friday 9 March 2007 Adam Millar attended a conference in Cairns held by the Planning Institute of Australia (“PIA”) titled “Climate Change Adaptation for Planning Practitioners”. It was the 8th of 10 such conferences that are being held across Australia by PIA, with funding from the Australian Greenhouse Office (“AGO”).

Included in the conference were small group workshops which formulated recommendations to be made to the AGO on what issues face planners in attempting to plan in respect of climate change issues, and what support planners need in order to better plan in respect of those issues.

Three of the most heartening and inspiring observations were that almost all planners present:

- 1) were concerned about climate change,
- 2) wanted to be better able to plan in respect of climate change issues, and
- 3) saw the biggest hurdles preventing responsible and prudent planning in respect of climate change issues as:
 - a) the large discretion that is still allowed to local government Councillors across the State as to whether or not to follow their planning advice and planning schemes), and
 - b) the political influence and pressure that those Councillors often appear to be subject to in considering development applications, and their associated operations.

ANU Climate Change Conference 12 – 13 April 2007

On 12 and 13 April 2007 Professor Tim Bonyhady (ANU College of Law) and Dr. Peter Christoff (University of Melbourne, School of Social and Environmental Enquiry) co-convened the “Climate Law in Australia” conference at the National Museum of Australia in Canberra. It was “the first Australian conference to focus exclusively on the emerging legal dimensions of global warming” and, by all accounts, was an incredible success.

Its highly esteemed co-conveners successfully brought together leading academics, policy analysts and climate change lawyers from Australia and around the world to explore vital legal issues that Australia needs to confront in relation to climate change and environmental law.

Topics included the international framework of Kyoto and the Asia-Pacific Partnership, the operation of Commonwealth and State laws, key climate change cases which have already been before Aus-

tralia’s courts and tribunals, carbon-trading, nuclear decision-making, alternative energy technologies and legal challenges to the coal industry.

Jo Bragg, Anita O’Hart (EDO Qld) and Adam Millar (EDO-NQ) and other Environmental Defenders from around Australia were lucky enough to attend, and all were further inspired to continue their important work in public environmental law.

It was clear from the conference that whilst climate change presents great environmental, economic, social and technological challenges to us, it also presents incredible opportunities for a sustainable and healthy future for our environment and, in turn, all Australians.”

For further information regarding the Climate Law in Australia conference please contact either **Adam Millar (ph: 07 4031 4766 or email edonq@edo.org.au); Jo Bragg or Anita O’Hart (ph: 07 3211 4466 or edoqld@edo.org.au).**

ENVIRONMENTAL LAW AND POLICY - Recent Changes

There has been a mountain of changes to environmental law at the Queensland and federal level in Autumn, which has kept EDO solicitors very busy keeping up with them! Amendments include:

- bans on new bores for domestic and commercial/ industrial use in Toowoomba and Brisbane;
- changes to four-wheel-drive, motorcycle, bicycle and horse-riders’ state forest access rights;

- leasehold land changes, including longer leases where environmental condition is improved,
- new powers for Council to issue on-the-spot fines for breach of development conditions,
- a draft crocodile conservation plan,
- proposed local Council amalgamations,
- announcements of a planned Commonwealth takeover of responsibility for the Murray River;

ENVIRONMENTAL LAW AND POLICY - Recent Changes cont.

- new rules for littering with broader enforcement powers, particularly against motorists;
- implementation of controversial recommendations on the Great Barrier Reef Marine Park Act;
- activation of the EIS provisions in IPA to be used for EPBC Act accredited assessment;
- approval of the resource operations plan for the Great Artesian Basin;
- release of the Logan Basin Water Resource Plan, and amendment of the Gold Coast Water Resource Plan to reduce the amount allocated for environmental flows;
- Release of the new Moreton Island Management Plan;
- Whistleblower reforms to include disclosures to MPs and protect public sector employees;
- The introduction of level 5 water restrictions in the South East in April;
- Amendments to IPA to facilitate acquisition and subdivision of land for the Traveston Dam;
- Additional catchments being subject to water metering;
- New guidelines under the Water Regulation for removing vegetation, excavation or placing fill in a watercourse, lake or spring;
- Amendments to the State Development to hurry along construction of the Traveston Dam;
- National heritage listing of Fraser Island, the Great Barrier Reef, Kakadu National Park and the Wet Tropics;
- *Geothermal Exploration Act 2004* amendments to simplify exploration and production;
- Release of the updated South East Queensland Regional Infrastructure Plan and Program
- Amendments to the Gene Technology Regulation;
- Amendments to the Electricity Regulation regarding energy efficiency of water heaters;
- Amendments to the Local Government Act to make elections more transparent and tighten the rules on conflicts of interests and electoral funding disclosures; and
- Commonwealth amendments on legislation dealing with nuclear proliferation, energy efficiency and air pollution from ships.

Marine and Tropical Research Advisory Body Named

On 12 March 2007, the Minister for the Environment and Water Resources, Malcolm Turnbull MP, announced the membership of the Advisory Council for the Marine and Tropical Sciences Research Facility (MTSRF) programme. MTSRF will involve representatives of regional business and industry, research organisations, Indigenous and community groups advising the Australian Government on its \$40 million marine and tropical science research programme. MTSRF will plan, fund and coordinate

cross-disciplinary research for public good to research into North Queensland's unique environmental assets, particularly the Great Barrier Reef and its catchments, tropical rainforests including the Wet Tropics World Heritage Area, and Torres Strait.

For further information about the MTSRF and a list of its Ministerial Advisory Council go to www.environment.gov.au/programs/cerf.

OPPORTUNITIES TO COMMENT

The following Government initiatives are currently open for public comment:

Feral animal threat abatement plan reviews – comments due 29 June 2007

Under the EPBC Act, threat abatement plans must be reviewed every five years. Following an independent review and other advice, the Invasive Species Section, DEW have recently released four draft revised threat abatement plans for feral CATS, GOATS, RABBITS and the European red FOX. The plans will be available for comment for a three month public comment period **closing Friday 29 June 2007**.

Details on the draft revised plans are at:
www.environment.gov.au/biodiversity/threatened/tap-drafts.html

Resort legislation review – comments due 29 June 2007

The discussion paper for the review of the Sanctuary Cove Resort Act 1985 (SCRA) and the Integrated Resort Development Act 1987 (IRDA) is open for public comment until 29 June 2007.

Download the paper from www.ipa.qld.gov.au/docs/resort_dev_discussion_paper.pdf.

All submissions should be addressed to The SCRA/IRDA Project Manager, Strategic Policy and Legislation, Program Development Division and be faxed to (07) 3235 4153 or emailed to planning@dlgpsr.qld.gov.au.

OPPORTUNITIES TO COMMENT cont.

Speewah development requires federal approval

The Norman Properties Pty Ltd residential development at Speewah in North Queensland has been found to be a controlled action under the Commonwealth EPBC Act, which requires assessment and approval by the Minister.

Calliope River Resource Operation Plan – comments due 13 July 2007

The Calliope River Basin Draft Resource Operations Plan has been released for public comment by 13 July 2007.

The draft plan proposes that 5,000 megalitres of unallocated water will be made available for all purposes in the Calliope River Basin and an additional 500 megalitres of unallocated water for town water supplies.

The draft ROP also covers metering arrangements, conversion to volumetric water licences, and water and ecosystem monitoring.

The draft ROP is available from www.nrw.qld.gov.au/wrp.calliope.html

Tenancy law under review, to save water – comments due 22 June 2007

A discussion paper has been released by the State government, looking at amending tenancy laws to make renters responsible for water use as private owners.

It proposes to let landlords pass on the charges for water consumption to encourage tenant water saving, but only if an individual water meter has been attached to the property, and the landlord has installed water wise devices.



The paper also proposes that fixing water leaks would be classified as an emergency repair, to be done within 24 hours.

The discussion paper is available from review@rta.qld.gov.au and comments are due by 22 June 2007.

FUNDING OPPORTUNITIES

Third Round of Community Water Grants – applications due 22 June 2007

Minister for Environment & Water Resources, Malcolm Turnbull, and the Minister for Agriculture, Fisheries & Conservation, Senator Eric Abetz, have opened the third round of Community Water Grants.

The Australian Government's Community Water Grants programme offers grants to help local community organisations save, recycle or improve the health of their local water resources.

Grants of up to \$50,000, or, in special cases, higher, are available for projects related to: water saving

and efficiency; water recycling; and water treatment - improving surface and groundwater health.

All applicants are required to register online before Friday 22nd June to submit an application. Online applications will close at 11am (EST) on **4 July 2007**.

For more information about Round 3 (including how to apply, application guidelines and promotional brochures) go to <http://www.communitywatergrants.gov.au>

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

THIS BULLETIN IS PRINTED ON 100% RECYCLED PAPER.