



EDO BULLETIN

October 2008

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PARADISE DAM IN COURT EDO Qld challenges lungfish fishway

In October, EDO Qld on behalf of Wide Bay Burnett Conservation Council (WBBCC) filed Federal Court proceedings against Paradise Dam builders Burnett Water Pty Ltd for breach of their federal environmental approval conditions to protect threatened lungfish.

The conditions on Paradise Dam require a fishway which is suitable for the lungfish, to be operated once the dam is operational. Along with barrister Dr Chris McGrath, EDO Qld will argue that the fishway design is not suitable for lungfish, the downstream fishway has never operated, and the upstream fishway has operated only with rare water releases. We are seeking a declaration that the approval has been breached and an injunction requiring the design and operation of the fishway be improved within six months.



Roger Currie of WBBCC, EDO Qld solicitor Larissa Waters, Mary Valley locals and ACF campaigner after filing the proceedings

This is the first case under the federal EPBC Act for breach of approval conditions. Sadly, Minister Garrett has failed to enforce his Department's conditions despite an audit from July 2007 showing the non-compliance. So once again, it falls to the community with the help of EDO to enforce our environmental laws.

Lungfish are endemic to the Burnett River and their only other natural habitat is the Mary River, where the Traveston dam is proposed - using the same fishway design. EDO Qld hopes the case will result in improvements to the design and the operation of the Paradise Dam fishway to lessen the impact on lungfish, but also make clear that even with improvements there will still be adverse impacts on lungfish - so that the best outcome for Mary River lungfish would be a free flowing river.



Queensland lungfish

The directions hearing is on 7 November 2008, with a hearing date expected in February or March 2009.

WBBCC are to be congratulated for their courage in taking the case, which has large costs risk if it is unsuccessful.

Please support the case by making a tax-deductible donation to WBBCC noting your donation is for the Paradise Dam case.

Booth v Frippery – Court order that grids be dismantled defied

Sadly, another lychee farmer who had been ordered to dismantle his electric grids due to harm to protected bats has defied the orders of the Court. After nine months from the ordered dismantlement date, in October Dr Carol Booth was forced to file an application for contempt of the Court against Mr and Mrs Thomas and their company Frippery Pty Ltd. It is hoped that the farmers will dismantle the grids without having to proceed to a full contempt trial in December 2008.

Dr Booth and EDO continue to lobbying the EPA to require all electric grids in Queensland to be dismantled, given their harm to native wildlife and their ineffectiveness at crop protection.

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

False Cape update – Cairns Council acts to remediate the site

Readers will recall that in September 2008 the federal Environment Minister Peter Garrett suspended EPBC Act approval for 12 months for this proposed resort and ordered that a full environmental audit be carried out, due to concerns about erosion and sediment control devices and the damage being caused to the adjacent Great Barrier Reef World Heritage Area and Marine Park.

With the approach of the northern wet season and the apparent financial difficulties of the developer, Cairns Regional Council resolved on 16 October 2008 to “perform and undertake remediation works to erosion and sediment control measures... ..on behalf of the owner” at a cost of up to \$150,000, which will be a debt owed to CRC and secured by a registered charge over the proposed development site. This is a welcome move by Council which EDO-NQ applauds.

However, there are further legal avenues open to Cairns Regional Council and the state government to hold the developer accountable for these approval breaches. EDO-NQ understands there have also been other approval breaches, relating to the destruction of rare and endangered plants on site. EDO-NQ is very disappointed that no action has been taken by EPA or



False cape photo: www.stevennomakowski.com.

Council on these breaches despite 12 months having passed since concerns were raised. EDO-NQ repeats its calls on the Council and the EPA to exercise their legal powers to enforce the conditions of approval at the False Cape site and take action against the developer for the many breaches of those conditions which have occurred.

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

Other Cases of Interest

NSW ESD climate case overturned by Court of Appeal

On 24 September 2008, the NSW Court of Appeal overturned the Land and Environment Court’s decision in *Walker v Minister for Planning* [2007] NSWLEC 741 and found that ecologically sustainable development was not a mandatory relevant consideration under Part 3A of the NSW *Environmental Planning and Assessment Act 1979*. EDO NSW had acted for Ms Walker in the Land and Environment Court where they were successful in overturning approval for coastal development on the ground that the Planning Minister had failed to consider ecologically sustainable development (ESD), specifically that climate change could increase the risk of flooding on the site. In a first for EDO, EDO NSW has filed an application for special leave to appeal to the High Court of Australia.

For more information about the case see www.edo.org.au/edonsw/site/casework_key.php#sandon

Federal Court criticises Environment Minister’s decision making process

In October 2008 the Federal Court overturned the decision of former Environment Minister Malcolm Turnbull to refuse an expansion of a phosphate mine on Christmas Island. The Court found that the Minister had failed to consider an EIS prepared for the mine, after relying on incorrect internal advice stating that the EIS was not required to be considered. The case exposed the fact that the Statement of Reasons did not reflect the decision making process actually followed, which is of great concern to EDO.

LAW REFORM

EDO Submission on Climate Smart 2050 Strategy review

In October 2008 EDO Qld made a submission on the review of the 2007 Climate Smart Strategy, which is already under review due to advances in scientific understanding of climate change impacts. EDO Qld's submission noted that while the Strategy contained several positive initiatives, these were under-funded and would result in only minor reductions in greenhouse gas emissions compared with the ongoing huge financial support for the coal industry, the failure to properly invest in the renewable energy sector, and the failure to ensure all transport, mining and infrastructure projects are assessed for their climate change impacts.



EDO Qld made many recommendations including calling on the Queensland government to:

- Legislate for greenhouse gas reduction targets, for 2020 and 2050;
- Amend the recent feed-in laws to calculate tariffs on a gross (not net) scale to act as a real incentive for households to install solar energy;
- Increase and legislate the mandatory renewable energy target to 30% by 2020 with graded interim targets, and remove reference to 'low emissions technology' from the target so that only truly renewable energy sources are promoted;
- Regulate carbon offset providers with legislation to ensure that adverse impacts on biodiversity and water are not caused;
- Shift policy focus and significant public funding away from 'clean coal' to renewable energy which is genuinely low or zero emissions;
- Prohibit new coal fired power stations in Queensland, instead promoting energy efficiency and renewable energy to meet demand;
- Determine the future energy mix for Queensland, and regulate new coal industries like coal seam gas and underground coal gasification within those parameters, rather than letting the outcome of pilot projects determine the policy decision on whether to allow that aspect of the industry
- Require coal mines to offset a percentage (initially 10%, increasing to 50% within 10 years) of the greenhouse gas emissions from the mining, transport and ultimate burning (even if overseas) of coal mined in Queensland; and
- Radically increase funding available to homeowners for full scale retrofits for energy efficiency, and rebates for solar installation.

EDO-NQ to lobby against pro-development amendments to FNQ2025

EDO-NQ is very alarmed at the Premier's recent announcement that the draft FNQ2025 Plan would be amended to allow large scale tourism developments outside the urban footprint.

News reports state that accommodation for up to 250 people and accompanying facilities with a floor area of no more than 4000sqm will be allowed outside the Cairns urban footprint, as long as they are not in areas of high ecological significance or on good-quality agricultural land.

Small-scale developments such as backpacker hostels and farm stays, which are already allowed, will have the option of taking in up to 100 people and have larger facilities.

EDO-NQ is very concerned at the watering down of urban sprawl constraints under the Plan and the potential damage to sensitive areas which warrant protection. EDO-NQ will raise the matter with Deputy Premier Paul Lucas this week.

While the formal submission period on FNQ2025 has ended, CAFNEC wants to keep up the pressure for amendment of FNQ2025 so that it protects wildlife corridors and important habitat, especially for cassowaries.

Join the campaign by sending a letter to the Deputy Premier using the points suggested by CAFNEC here www.cafnec.org.au/temp/keep_FNQ2025_on_track.doc.

LAW REFORM Continued

EDO Submission on draft 'clean coal' Bill

In October 2008 EDO Qld made a submission on the draft *Greenhouse Gas Storage Bill 2008* (Qld), about carbon capture and storage (burying greenhouse gases underground) in Queensland. EDO Qld objected to the practice as it does not reduce fossil fuel consumption and transfers its environmental consequences to future generations. That point made, we suggested significant improvements to the Bill that were needed to incorporate rigorous independent assessment process, an ongoing monitoring regime, and strict adherence to the principles of ecological sustainable development.

- EDO Qld made recommendations to improve the Bill to address:
- The lack of any fundamental environmental principles in the Purpose of the Bill;
- The lack of any certainty with respect to long term rights and responsibilities for the buried CO₂;
- The wide, discretionary powers given to the Minister;
- The failure to adequately regulate for the long term monitoring, measurement and verification (MMV) of GHG storage sites;
- The absence of public rights to comment and enforce non-compliance or breaches of the Act;
- The powers given to the Coordinator General under *State Development & Public Works Organisation Act*



1971 to avoid the mandatory conditions proposed by the Bill for projects declared 'state significant';

- The lack of clarity on the interaction between the Bill and other legislative regimes, particularly the *Environmental Protection Act 1994*; and
- The lack of information about the proposed amendments to the *Environmental Protection Act*, specifically how environmental authorities (GHG storage) will operate, whether all environmental authorities will trigger the EIS process, and whether standard environmental conditions would be imposed.

EDO-NQ reminds Council about compensation under FNQ2025

Far North Queensland's first statutory regional plan (and only the second for the State), the FNQ2025 Regional Plan, is due to be released early next year. In the past many local governments have seemed reluctant to make environmentally protective changes to their planning schemes (for example, to rezone land to prevent inappropriate development) for fear that they will have to pay large amounts of compensation to developers.

Ahead of the release of the FNQ2025 Regional Plan, EDO-NQ will be reminding local councils in FNQ that compensation is not payable for any reduction in the value of land which is caused by changes to planning schemes if those changes are designed to reflect the FNQ2025 Regional Plan. FNQ2025 is therefore an excellent opportunity for Councils in the region to amend their planning schemes to better protect the environment and promote ecologically sustainable development (the declared object of IPA) without fear of being crippled by hefty compensation claims.

EDO-NQ encourages all FNQ Councils to take this rare and important opportunity.

Submission on electoral donation laws

In October 2008 EDO Qld made a submission to the Queensland Parliament's Legal, Constitutional and Administrative Review Committee's inquiry into the transparency and accountability of Queensland's electoral process. EDO Qld called on the Government to ban all political donations, but failing that to improve disclosure and reporting obligations so that voters can find out the source of political donations to candidates and parties before they vote.



All of these submissions are available from
www.edo.org.au/edoqld
Click on the link to LAW REFORM

LAW AND POLICY WATCH

Queensland environmental law and policy changes

Marine protection

- Following a report that highlighted the continued decline in water quality in the Great Barrier Reef and a Reef water quality summit in late October, the state government has announced it will introduce mandatory regulations on the use of agricultural chemicals in the catchments that feed into the Reef. EDO welcomes legal regulation of agricultural given the limited success of previous voluntary measures. However EDO is concerned that the small amount of funding committed by the state (\$50million) could undermine the enforcement of the new laws.
- The reviewed Moreton Bay zoning plan has been released, banning fishing in green zones which cover 16% of the Bay (up from 0.5% current protection), an increase of 1% from the draft zoning plan. Conservation groups are concerned that 16% is insufficient and advocated for 30% green zones. An associated initiative is a five year ban on re-entry by commercial fishers who have their licences bought back by the state government.
- Indigenous customary use of fish traps has been recognised as a defence to certain offences under the *Fisheries Act*, except in certain prescribed waters.
- The *Fisheries (East Coast Trawl) Management Plan 1999* has been amended to give scallop populations time to recover from harvesting.

Water

- The *Water (Commonwealth Powers) Bill 2008* was tabled in state Parliament on 7 October 2008. The Bill transfers certain state powers to the Commonwealth for management of the Murray Darling Basin, including water charging and entitlements and the use of Basin water resources for 'critical human water needs'.
- The Coordinator General has recommended approval of the Wyaralong Dam on Teviot Brook in the Logan River catchment. However, the dam still requires federal approval under the EPBC Act before it can proceed.
- The Traveston Dam supplementary EIS is expected to be publicly released in December 2008 along with the Coordinator General's evaluation report which will recommend whether the state government should approve or refuse the dam. The EIS and evaluation report will then be sent to the federal Environment Minister who has 40 days (extendable if further information is requested from the proponent) to decide whether to refuse, approve or condition the dam.

Planning and Development

- Amendments to the *Transport Planning & Coordination Act 1994* allow Queensland Transport to place conditions on development applications requiring the provision of infrastructure for active transport (cycling or walking) and to ensure these options are included in planning schemes.
- Amendments to the *Urban Land Development Authority Regulation 2008* conferred planning control to the State Government over 295ha at Fitzgibbon. The area is one of the last remaining areas of bushland in Brisbane and close to the Boondall wetlands. The Urban Land Development Authority has issued an interim management plan to require developers to provide low-cost, "eco-friendly" housing, despite the extensive loss of bushland and open space.
- The proposed North Bank redevelopment has been cancelled by the state government after vocal opposition by the heritage groups and the community.
- The draft EIS for the proposed Shute Harbour marina in the Whitsundays has been given to the state government and will shortly be released for public comment.
- New Planning and Environment Court Forms came into effect on 2 October 2008 and are available from www.courts.qld.gov.au/107.htm#pe. These changes will be incorporated into the revised edition of EDO's Community Litigants Handbook coming in 2009.

Nature Conservation

- Following the 2005 amendments which permitted horse riding in national parks (recovery), formal trails have been designated in a "SEQ horse riding trail network" within protected areas that were formerly forest reserves. An independent review and report on the impacts of horse riding in those areas must be completed by 2025 under recent amendments to the *Nature Conservation Act*.
- The 160,000 ha McIlraith Range National Park in Cape York and 5000ha in the Bohle Plains area just outside Townsville have been recently dedicated as national parks.

Local government

- Definition of environmental nuisance under the *Environmental Protection Act* has been expanded and now includes aerosols, fumes, light, noise, odour, particles or smoke. When the revamp of the *Environmental Protection Regulation* occurs, responsibility for environmental nuisance and less serious water pollution offences (putting rubbish, oil, paint, sediment etc into water) will be handed over to local government.

LAW AND POLICY WATCH continued

Mining

- The *Mines and Energy Legislation Amendment Bill 2008* tabled in October enacts the Government's recent decision to ban oil-shale mining from the McFarlane deposit in the Whitsundays for 20 years, and in any other area that can be declared under a Regulation. The Bill also gives power to Mining Registrars and the Minister to consider the public interest when approving, varying, conditioning mining activities under the Mineral Resources Act and allows a mining activity to be refused on the basis of the public interest. The Bill also enacts compensation for owners in Collingwood Park for subsidence that occurred due to underground coal mining activity.

Climate Change

- The state government has announced it will set up an Office of Clean Energy within the Department of Mines and Energy to coordinate Queensland's renewable energy options. EDO Qld supports this step but would prefer to see the office within the EPA, and we are concerned it will only focus on 'clean coal' rather than renewable energy sources.
- The state government has announced a Big Light Switch Campaign giving away 1 million energy saving light bulbs. This is a welcome small step but pales in comparison to the climate impacts of the 17 new coal mines planned for Queensland.
- The state government has announced it will develop a map identifying suitable wind farm sites.

Federal environmental law and policy changes

- The Federal Environment Minister has commissioned an independent study of Queensland East Coast Inshore Fin Fish Fishery. The independent review is a response to widespread concerns for shark populations in the Great Barrier Reef Marine Park. One focus of the review will be on the how shark stocks interact with EPBC protected dugongs, whales and sawfish. The review will examine the proposed management arrangements for the fishery and provide recommendations to ensure compliance with the EPBC Act.
- *Littoral Rainforest* and *Coastal Vine Thickets* of Eastern Australia have been added to the 'critically endangered' list of threatened ecological communities under the EPBC Act. Development that is likely to have a significant impact on these areas will now require federal environment approval.
- The Federal Environment Minister has rejected a request to import live bumblebees into Australia.
- The Federal Environment Minister has released the 2008-2009 priority assessment list for nominations of threatened species, ecological communities and key threatening processes to be added to EPBC lists, including the koala. See www.environment.gov.au/biodiversity/threatened/publications/priority-assessment-list.html.
- The *Water Amendment Bill 2008* has been tabled in federal Parliament, containing extensive amendments to the federal *Water Act 2007* which implement federal takeover of the management of the Murray-Darling Basin. The Bill transfers power from the MDB Commission to the new MDB Authority which will manage State water shares and natural resource management. The Bill amends the current Basin Plan to include arrangements for 'critical human water needs' for communities dependent on system. The Bill also extends ACCC's regulatory role to determine and approve all regulated water charges. For more information see www.environment.gov.au/water/action/npws-act07.html.

International environmental law and policy changes

- The European Union has proposed law reforms that, if passed, would require power stations to pay for all their greenhouse gas emissions by 2013, in a bid to achieve the EU's carbon emission reduction target of 20% by 2020. Tougher pollution limits on airlines have also been proposed.
- Britain is set to amend its soon-to-be legislative carbon emissions reduction target of 60% by 2050 to 80% by 2050. These are the first domestic greenhouse gas reduction targets to be legislated and EDO calls on the Australian government to legislate similar targets.

IMPACT is back!

ANEDO has retrofitted its quarterly journal IMPACT.

The next edition deals with food and sustainability.

"Overeating the Environment" is to be published in December 2008.

You can subscribe to IMPACT at www.edo.org.au/edonsw



OPPORTUNITIES TO COMMENT

- The draft Rural Futures Strategy for South East Queensland is open for comment until **3 November 2008**. See www.dip.qld.gov.au/regional-planning/have-your-say-on-the-draft-rural-futures-strategy.html
- The federal government's discussion paper on improving fuel efficiency of Australian vehicles is open for comment until **7 November 2008**. See www.environment.gov.au/settlements/transport/
- Three possible approaches for settling water charges in the Murray Darling Basin are proposed by the ACCC in an issues paper open for comment until **12 November 2008**. See www.accc.gov.au/content/index.phtml/itemId/845542
- A second ACCC issues paper discussing fees and charges that might apply when surrendering water rights across the Murray Darling Basin is open for public comment until **17 November 2008**. See www.accc.gov.au/content/index.phtml/itemId/846287
- The Archer Basin, Lockhart Basin and Stewart Basin wild river declaration proposals are open for comment until **21 November 2008**. See www.nrw.qld.gov.au/wildrivers/index.html
- The proposed Cairns Transit Network, linking Palm Cove to Gordondale, is open for public comment until **5 December 2008**. See www.cairnstransitnetwork.com.au/
- The following Queensland Parliamentary E-Petitions are open for public signatures at www.parliament.qld.gov.au/view/EPetitions QLD/CurrentEPetitions.aspx?LIndex=1:
 - * Legislative protection for Baffle Creek - **closes 31 October 2008**
 - * A light rail system in Brisbane especially for Brisbane's universities - **closes 2 December 2008**
 - * Stop Mining on Steve Irwin Wildlife Reserve - **closes 4 December 2008**
 - * Opposition to the Northern Link Tunnel - **closes 11 January 2009**
- The Draft Resource Operations Plans (ROPs) for the Burdekin Basin, the Gulf and the Mitchell water planning areas are open for public comment until **Friday 30 January 2009**. See www.nrw.qld.gov.au/wrp/catchments.html
- Queensland government has called for public comment on the performance and effectiveness of Queensland's Indigenous cultural heritage legislation. Public comments are open until **28 February 2009**. See www.nrw.qld.gov.au/cultural-heritage/legislation/index.html
- The Australian Marine Conservation Society is calling for support to lobby the federal government for a Coral Sea Heritage Park. Lodge a letter of support at www.amcs.org.au/default2.asp?active_page_id=562.

REPORTS RELEASED

- SEQ Healthy Waterways 2008 Report Card on the health of marine, estuarine and freshwater catchments in SEQ - www.ehmp.org/results.html
- CSIRO preliminary assessment of the impacts of climate change on Australia's fisheries - www.climatechange.gov.au/impacts/publications/fisheries.html
- Greenpeace International update of their Energy Revolution (no coal) scenario - www.greenpeace.org/international/news/energy-revolution-now271008. Australia-specific report at www.greenpeace.org/australia/resources/reports/climate-change/energy-revolution-scenario-full
- EIANZ Ecology discussion paper on biodiversity in the context of ESD and planning, on which public comments are sought: <http://eianzecology.blogspot.com>
- LGAQ report on residential land supply and demand in SEQ - www.lgaq.com.au/portal/dt?action=content&provider=JSPTabContainer
- The final **Garnaut Report** was released on 30 September 2008 containing recommendations on Australia's response to climate change - www.garnautreview.org.au/domino/Web_Notes/Garnaut/garnautweb.nsf. Professor Garnaut offers two main scenarios for cutting Australia's greenhouse gas emissions, which sadly both entail serious and irreversible harm to coral reefs around the globe:
 - * Achieving a level of 450 parts carbon dioxide per million in the Earth's atmosphere by carbon emission reductions of 25% by 2020 and 90% by 2050;
 - * Aiming for 550 parts per million, which Professor Garnaut says will be simpler to achieve although it does put the world at a greater risk of very dangerous climate change, by emissions cuts of 10% by 2020 and 80% by 2050.

Funding opportunities

Applications for round 4 of the ecoBiz program, which offers rebates of up to \$150,000 for businesses with plans to reduce their energy and water use, their carbon emissions and waste generation, close **31 October 2008**.

See www.epa.qld.gov.au/environmental_management/sustainability/ecobiz_queensland/.

Applications for the 2008-09 round of Federal Government's Grants for Voluntary Environment and Heritage Organisation (GVEHO) close **28 November 2008**.

See www.environment.gov.au/about/programs/gveho/application-08-09.html.

UPCOMING EVENTS

Walk Against Warming 2008

The annual Walk Against Warming 2008 public rally is on Saturday 15 November 2008. EDO lawyers will attend and urge all readers to do so to send a strong message to government that action must be taken to prevent catastrophic climate change.

In Brisbane, the Walk will begin at Queens Park in the CBD at 12:30pm. For more information see www.walkagainstawarming.org.



Brisbane's 2007 Walk Against Warming

EDO NEWS

EDO Staff News

After a long search, EDO-NQ is pleased to have now recruited a second solicitor, who will join their dedicated team in the coming weeks. EDO-NQ would like to thank its members and clients for their patience and understanding during this recruitment process.

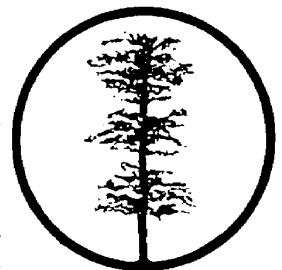
Everyone at EDO Qld sends congratulations and best wishes to Anita and Seamus O'Hart on the birth of a healthy son, Jarvis, on 29 October.

While Anita is on maternity leave, Scott Sellwood is in the third solicitor's office. Congratulations to Scott on his admission as a fully qualified solicitor!

EDO QLD needs a new logo!

Our logo (*right*) is a little dated and we're looking for a new image.

We appreciate that good design is worth paying for - but we'd rather spend our limited resources defending the environment than promoting ourselves (we suspect our funders and donors would prefer that too).



If you're a graphic design professional, student or skilled amateur, we need your help.

For details, please visit our website: www.edo.org.au/edoqld and click on "Help Design a New Logo"

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

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