

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

# **BULLETIN**

## **September-October 2005**

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### **What's in this Bulletin?**

It has been a very busy couple of months for both the EDO Queensland and North Queensland offices! This Bulletin will give an overview of recent EDO case news, as well as recent legal reforms and upcoming legal changes. There is information on the Springbrook Cabins, East Point, and Cassowary Cases, as well as an update on recent successful EPA prosecutions. The EDO's submission regarding the review of the Great Barrier Reef Marine Park Authority (GBRMPA) and the Great Artesian Basin Water Resource Plan will also be discussed. News of recent legislative changes such as the new Bills, Acts and Policies in regard to water law, the Temporary Local Planning Instrument to protect the Daintree Rainforest, the *Environmental Protection and Other Legislation Amendment Bill 2005* and proposed marine planning reforms can also be found below.

### **COURT CASE NEWS**

#### **Case update from EDO-Qld**

1. *Springbrook Cabins case – GECKO, Friends of Springbrook Alliance & O'Sheas v Gold Coast City Council and Stone*

As many of you are probably aware, the Springbrook Cabins case involved an appeal against a Gold Coast City Council decision to approve an expansion of a tourist development in an ecologically sensitive part of Springbrook. Major gains for the site were achieved through the running of the appeal, with the developer being prompted to move cabin location from forest to already cleared sites, reduce cabin size, change practices of wastewater disposal, and allow for the protection of many rare plant species. On 16<sup>th</sup> August 2005 the conditions of approval were finally made by an order of Judge Newton. There were many improvements to conditions on the site, which sets an important precedent for limiting future developments in sensitive areas.

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

#### **Case update from EDO-North Qld**

1. *East Point case – Mackay Conservation Group Inc v Mackay City Council & East Point Mackay Pty Ltd*

On 28<sup>th</sup> September 2005 the Mackay Conservation Group lost their appeal against the East Point development, however as a result, additional conditions, such as a restriction on keeping cats and dogs and the use of herbicides and pesticides within the development, were imposed by the Court. The appeal exposes some of the inadequacies of current planning laws in protecting the environment. In particular it highlights the flexibility in which the Courts will construe planning schemes to allow for development along the coast, including that although safety is an important issue, it should not be assessed to prevent development. The decision also demonstrates the inability of State Coastal Management Plans to protect important areas of the coast.

## 2. Cassowary case - Community for Coastal and Cassowary Conservation v Johnstone Shire Council & Cavannah & Ors

The EDO-NQ is acting for the Community for Coastal and Cassowary Conservation Inc (C4) who have lodged an appeal against the decision of the Johnstone Shire Council to approve a 22 lot residential subdivision in cassowary habitat at Mission Beach. The appeal challenges the material change of use of the area from rural conservation to rural residential. C4 contend that the number of lots granted is excessive and is in conflict with the provisions of the Johnstone Shire Plan which deal with bonus development rights. The appeal is to be heard in the Planning and Environment Court in Cairns in early 2006.

### **Other cases of interest**

#### Congratulations to the Qld EPA on recent prosecutions

Readers will recall from our final 2004 Bulletin EPA's successful prosecution of barramundi farming company Nino Pty Ltd and its director Mr Phillips, for large-scale shooting of protected native birds between June 2002 and August 2003. In October 2004 a Cairns Magistrate convicted and fined the company \$35,000 and ordered that Mr Phillips pay \$250,000 (\$50,000 per annum) over five years toward the cost of developing pond management systems to prevent bird mortality. Mr Phillips then sought judicial review of that decision from the Supreme Court claiming he had pleaded guilty to the charges on incorrect legal advice and that the *Nature Conservation Act* couldn't apply to freehold land. The Supreme Court dismissed those arguments, and Mr Phillips appealed that decision to the Court of Appeal. On 25 August 2005 the Court of Appeal dismissed Mr Phillips' appeal, finding that the Supreme Court had been correct in its ruling and that there was no miscarriage of justice. The Court of Appeal judgement is available from <http://www.courts.qld.gov.au/qjudgment/QCA%202005/QCA05-317.pdf>.

In another recent EPA prosecution, three directors of Papillon Mining and Exploration Pty Ltd on the Sunshine Coast pleaded guilty and were fined a total of \$40,000 in the Maroochy Magistrates Court on 22 September 2005 for failing to meet the conditions of an environmental protection order (EPO). The EPO required Papillon to implement a number of measures to improve environmental standards at the mine including increasing the storage capacity of a tailings dam on the site and reducing the cyanide concentrations of tailings stored in the dam. EDO congratulates the EPA on these two successful cases!

### **LAW REFORM NEWS**

#### **Submission on review of Great Barrier Reef Marine Park Authority**

In late September 2005 EDO-NQ and EDO Qld made a joint submission on the review of the Great Barrier Reef Marine Park Authority (GBRMPA). The recommendations in our submission included:

1. Give GBRMPA greater ability to manage impacts on the Reef under the EPBC Act, including increased powers to assess coastal developments and other activities which may affect the GBR;
2. Better public consultation and access to information regarding GBRMPA's permit system;
3. That consideration of cumulative impacts of development and the principles of ecologically sustainable development including the precautionary principle apply to all decisions made under the GBRMP Act;
4. Give GBRMPA broader enforcement rights and greater resources, include public enforcement rights, and increase penalties under the GBRMP Act to better match the EPBC Act penalties;
5. Prohibit mining in the whole of the GBR region, including the Coral Sea; and
6. Clarify GBR Marine Park boundaries so they match the boundaries of the World Heritage Area.

*For more information or a copy of the submission contact Kirsty Ruddock of EDO-NQ.*

## **Submission on Great Artesian Basin Water Resource Plan**

EDO Qld attended meetings and provided advice to conservation groups on the role and functions of Water Resource Plans (WRPs), and in drafting their submission on the Great Artesian Basin draft WRP. The groups secured one excellent outcome of incorporating land use restrictions relating to irrigation of crops for the Cooper River under the Great Artesian Basin WRP, although further land use restrictions requested by the groups were rejected.

*For more information about the GAB WRP or water planning generally contact Jo Bragg of EDO Qld or the Queensland Conservation Council.*

## **NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES**

### **Important legal changes to...**

#### **1. Water law and policy – new Bills, Acts and Policies**

The Queensland government's water reform agenda continues at full speed, with four legislative developments and a major policy announcement:

##### **(1) Water and Other Legislation Amendment Act 2005 partially commences**

As discussed in our May 2005 Bulletin, this Act requires Councils and water authorities to develop mandatory drought management and system leakage management plans. The Amending Act has still only partially commenced, with some provisions not yet proclaimed into force, but the provisions dealing with drought and system leakage commenced on 1 October 2005.

*For a copy of the amending Act see [www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC019.pdf](http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC019.pdf).*

##### **(2) Queensland Water Plan 2005-2010 released**

In late August 2005 the Premier released the Queensland Water Plan 2005-2010. The Plan contains 7 strategies which include water pricing (changes to water rates for urban, commercial, mining, petroleum and local government users), catchment based water resource plans and water trading, developing regional supply strategies and building new water storage and supply infrastructure, water re-use and recycling, protecting water quality, education and enforcement programs, and investment in water and climate change science and technology.

Some of these policies will require legislative changes and EDO will report on these in our Bulletin.

*For a copy of the Water Plan see [www.nrm.qld.gov.au/water/queensland\\_water\\_plan.html](http://www.nrm.qld.gov.au/water/queensland_water_plan.html)*

##### **(3) Water Amendment Bill 2005 introduced**

This Bill was introduced to Queensland Parliament on 25 October 2005, and amends the *Water Act* to implement State water supply emergency directions in emergency water shortage situations. The Bill also allows service providers to pass on new water charges announced as part of the Water Plan 2005-2010, and increases the power of service providers to impose water restrictions.

*For a copy of the Bill see [www.legislation.qld.gov.au/Bills/51PDF/2005/WaterAB05.pdf](http://www.legislation.qld.gov.au/Bills/51PDF/2005/WaterAB05.pdf).*

##### **(4) Water Efficiency Labelling and Standards Bill 2005 introduced**

This Bill was introduced to Queensland Parliament on 25 October 2005 and establishes a new water efficiency labelling scheme for designated products in residential, commercial and industrial buildings. If passed, the Bill will require all manufacturers to label washing machines, dishwashers, toilets, showers and some types of taps and urinals with a star rating according to their water efficiency, with 6 stars being the most water efficient. The scheme will commence on 1 July 2006.

The legislation is part of a national approach called the Water Efficiency Labelling and Standards Scheme (WELS). Readers will recall from our March-April 2005 Bulletin that federal legislation requiring labelling of water-using appliances or products to show water efficiency, the *Water Efficiency Labelling and Standards Act 2005 (Cth)*, commenced on 18 March 2005.

For a copy of the Bill see [www.legislation.qld.gov.au/Bills/51PDF/2005/WaterEffLaStB05.pdf](http://www.legislation.qld.gov.au/Bills/51PDF/2005/WaterEffLaStB05.pdf)

(5) Plumbing and Drainage and Other Legislation Amendment Act 2005 passed

As mentioned in the August 2005 Bulletin, the *Plumbing and Drainage and Other Legislation Amendment Bill 2005* introduced to Parliament on 9 August 2005 will allow homeowners in sewerred areas to seek Council approval to divert greywater from showers, bathtubs and washing machines to water their gardens via underground watering systems. Blackwater (containing human waste) and kitchen greywater cannot be used, nor will units or townhouses be eligible for greywater systems. This Bill was passed on 23 August 2005, assented to on 1 September 2005 and will commence operation on 1 March 2006.

For a copy of the amending Act see [www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC039.pdf](http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC039.pdf).

2. Daintree protected by Minister until new planning scheme arrives

On 16 September 2005 Local Government and Planning Minister Desley Boyle re-introduced a temporary local planning instrument (TLPI) "Protection of Conservation Values – North of the Daintree River to Cape Tribulation" to strictly limit development in the Daintree area of the Douglas Shire. The previous TLPI imposed by the Minister had concluded its one year life span, and since Council had failed to introduce a further TLPI itself, the Minister again used her powers under section 2.3.3(1) of the *Integrated Planning Act* to freeze development for another year or until the new planning scheme is finalised. EDO congratulates Minister Boyle again for employing the little used State powers under IPA to protect this fragile area.

For more information contact Kirsty Ruddock of EDO-NQ on 4031 4766 or [kruddock@edo.org.au](mailto:kruddock@edo.org.au).

3. New mining rehabilitation, coastal works, horse-riding, forest and Wet Tropics rules – EPOLA Bill 2005 introduced

On 23 August 2005 the *Environmental Protection and Other Legislation Amendment Bill 2005* was introduced to Parliament. The Bill amends coastal, planning, mining, nature conservation and Wet Tropics Management laws to:

- allow horse riding in national parks (recovery) for up to 9 years, and stock grazing in state forests for 7 years (or until 2024 in a SEQ Regional Forest Agreement forest reserve);
- improve safety obligations for emergency coastal works and tidal works structures;
- extend forest reserve tenure for native forest logging on land outside SEQ until 2025. As logging is completed land is progressively transferred to protected area estate;
- exclude the Wet Tropics Management Plan from the automatic expiry provisions of the *Statutory Instruments Act 1992* and provide an equivalent review process by the Wet Tropics Management Authority every 10 years under the *Wet Tropics World Heritage Protection and Management Act 1993*
- provide a certification process for progressive rehabilitation that has been completed for parts of a mining project. The changes are designed to speed up mine site rehabilitation schedules, and establish that if a company meets the requirements that apply at the time it completes rehabilitation, any new standards that might be introduced later will not apply to that project. The Premier also announced that a new fund will be established to ensure that taxpayers do not foot the bill for incomplete rehabilitation if a mining company fails before completing rehabilitation.

The Bill is available from [www.legislation.qld.gov.au/Bills/51PDF/2005/EPOLAB05.pdf](http://www.legislation.qld.gov.au/Bills/51PDF/2005/EPOLAB05.pdf).

#### 4. Federal marine planning to get legal teeth

The federal Environment Minister, Senator Ian Campbell, has announced the government will give its program of Regional Marine Planning legal teeth by bringing it under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). The initiative will see Regional Marine Plans, including a system of Marine Protected Areas, established over Australia's 14 million square kilometre ocean jurisdiction. Those Plans will guide the Minister and industry about key conservation issues and priorities in each marine region. *For background on Australia's Oceans Policy and Regional Marine Planning see [www.oceans.gov.au/the\\_oceans\\_policy\\_overview.jsp](http://www.oceans.gov.au/the_oceans_policy_overview.jsp).*

## EDO NEWS

### EDO Qld welcomes new Management Committee Members

EDO-Qld's AGM was held on Tuesday 27 September 2005 and saw the election of five new management committee members: Alan Chenoweth (town planner), Martin Taylor (National Parks Association of Qld), Sean Ryan (solicitor), Daniel Franks (PhD student) and Peter Wulf (environmental law lecturer). A warm welcome to these new members! They join returning committee members Lesley King (Chair), Rob Stevenson (Treasurer) and John Llewellyn (Secretary). Thank you all for your time and commitment to EDO Qld!

The AGM also included as a guest speaker public interest barrister Chris McGrath. Chris outlined his recent high profile Federal Court cases about Japanese whaling and coal mine greenhouse emissions to an enthralled audience, and explored the practical implications of these outstanding test cases. Thankyou very much for a great presentation Chris!

## USEFUL TIPS

### Regional Ecosystem maps now available online!

Certified Regional Ecosystem (RE) maps can now be downloaded without charge from [www.epa.qld.gov.au/REMAPS](http://www.epa.qld.gov.au/REMAPS)! The service enables you to select an area of land by Lot and Plan number or coordinates and receive a 2001 RE map in a PDF document by email. Information shown on the map includes current data for the distribution and status of REs listed in the Vegetation Management Regulation, areas of essential habitat and State wildlife corridors, cadastre parcels, National Park and State Forest boundaries, bioregion boundaries, towns and roads. In areas where no RE mapping exists (West and north Qld), remnant vegetation cover is shown. RE maps are also available at all NRM offices.

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