



ENVIRONMENTAL DEFENDERS OFFICE  
(QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF  
NORTHERN QUEENSLAND INC.



## **BULLETIN – AUGUST/SEPTEMBER 2003**

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

As well as informing you on three EDO(Qld) Court cases which have kept us extremely busy, this issue discusses proposed changes to the law which allow public enforcement of Queensland's threatened species and protected areas legislation. EDO-NQ updates you on special legislation passed to allow dredging for canal estates in Far North Queensland, and reports on the outcome of a case involving clearing endangered vegetation between Clifton Beach and Palm Cove. We also note opportunities for public participation in a Commonwealth inquiry into salinity, and inform you on the outcome of our Annual General Meetings. You'll forgive us for the lateness of this Bulletin once you read about all our recent achievements!

### **Third party rights in the *Nature Conservation Act* if Bill passed!**

After more than 12 months of persistent advocacy, EDO(Qld) in collaboration with Dr. Carol Booth and the QCC had a significant win with proposed changes to the *Nature Conservation Act* ("NCA"), Queensland's threatened species and protected areas legislation. Proposed changes to the NCA based on drafting by Jo Bragg went to Parliament on 19 August 2003, as part of the *Environmental Legislation Amendment Bill 2003*, which we hope will be passed shortly. We haven't mentioned it before, as we didn't want to jeopardise the Bill going to Parliament!

The proposed NCA amendments give third parties legal standing to seek declarations and enforcement orders about native wildlife or protected areas. Once the Bill is passed by Parliament and becomes law, these new rights will mean that a group or an individual environmentalist will have the right to seek (for example) an "injunction" to stop damage to a protected area and rehabilitation orders. As with planning cases, each side will pay their own costs so while it will still cost money to get a case up, these amendments remove two significant barriers to environmentalist litigation under the NCA - legal standing and fear of paying the other sides' costs if unsuccessful.

The amendments also include extended legal standing for environmentalist to seek Judicial Review of decisions made under the NCA, modelled on the Commonwealth *Environment Protection and Biodiversity Conservation Act* ("EPBC Act") provisions. Basically any environmental group established and active for over two years will be eligible to Judicial Review decisions made under the NCA.

Third party enforcement rights are becoming more common in Queensland's environmental legislation, due in large part to work by EDO over the years but also to a preparedness by State government Ministers to consider these rights. Environment Minister Dean Wells, whom we thank for pursuing this reform as promised, has publicly acknowledged that he agrees as a matter of policy with third party enforcement, so EDO looks forward to the inclusion of these rights into other legislation administered by the EPA!

*The Environmental Legislation Amendment Bill is available via*

*[http://www.legislation.qld.gov.au/Bill\\_Docs/BI150\\_03.htm](http://www.legislation.qld.gov.au/Bill_Docs/BI150_03.htm). For more information about the Bill and its effect, contact Jo Bragg at EDO (Qld).*

### **Nathan Dam Case heard in Brisbane on 22 September 2003**

Well after 9 months since filing proceedings, the federal court finally heard the Nathan Dam case on 22 September 2003! As you would recall from previous Bulletin updates, the case involved judicial review of the federal Environment Minister's decision about the parameters of environmental impact assessment of the proposed Nathan Dam on the Dawson River, under the Commonwealth *Environment Protection and Biodiversity Conservation Act* ("EPBC Act"). On behalf of the QCC and WWF, EDO(Qld) and barristers Stephen Keim and Chris McGrath challenged Minister Kemp's decision to ignore the potential impacts of irrigated farming practices (enabled by water from the proposed dam) on the Great Barrier Reef World Heritage Area and on listed migratory species.

The Minister's failure to consider these "third party downstream impacts" as an impact of the dam was the crux of the case. Legal argument focussed on the Minister's obligation to consider "all adverse impacts" of the Dam when making the decision about whether his approval was required, and on whether the "action" of constructing and operating the Dam should be construed to include impacts on water quality in the Reef from agriculture which the Dam is being built to facilitate.

We had excellent written material and oral presentations, which was the result of long and thorough work by our barristers Chris McGrath and Stephen Keim. Justice Kiefel reserved her decision on the case, so it could be weeks or months until we receive her judgement, but we have our fingers crossed! A win could not only strengthen the rigour of the environmental assessment of the proposed Dam, but could also set a precedent requiring the Minister to take a broad rather than a narrow approach when considering the adverse environmental impacts of actions, such as major infrastructure, on matters of national environmental significance in the future!

*For more information about this case, or for a copy of our written arguments, contact Larissa Waters or Jo Bragg at EDO(Qld).*

### **Special Marine Parks Legislation Allows Canal Estates Development in Cairns**

On Tuesday 19 August 2003 the *Marine Parks Amendment Bill 2003* was passed, introducing one-off amendments to the *Marine Parks Act* which will allow the proposed Blue Water canal estates development at Earl Hill, 15 kilometres north of Cairns, to proceed. The new amendments allow dredging in Half Moon Bay and Half Moon Creek, overriding the decision by the

Environmental Protection Agency to refuse permission to dredge in two zones of the Marlin Coast/Trinity Inlet Marine Park for failure to comply with the *Marine Parks (Trinity Inlet/Marlin Coast) Zoning Plan 2001* and the *Marine Parks Regulation 1990*.

The new amendments provide that dredging can only occur if there is compliance with a Deed of Agreement entered into by the company and the State and local government. The Deed requires the developer to provide community and environmental services within a specified time, including rehabilitating land and constructing walking and cycling tracks. However, irrespective of these mitigation measures, both EDO-NQ and EDO(Qld) have grave concerns about the message such legislation sends to the Queensland community. The EDOs recognise that the legislation was drafted as narrowly as possible so as to avoid its affecting other coastal developments, and are aware that the situation was complicated by the developers having most of their approvals prior to the creation of the Trinity Inlet/Marlin Coast Marine Park. However, the EDOs understand the legal position to be that despite possession of other approvals, the developers required approval under the *Marine Parks Act* for their development to proceed. The circumvention of this situation with special legislation will by its nature create a lack of confidence in environmental decision making procedures in Queensland, and undermine the raft of protection measures for the State's environment provided for in Queensland legislation.

*For further details contact Joanna Cull of EDO-NQ on (07) 40314766 or email [jcull@edo.org.au](mailto:jcull@edo.org.au)*

### **Springbrook Conservation Appeal heard in Southport on 25-28 August 2003**

On 25-28 August 2003 EDO(Qld) represented environmentalists in a Southport Planning and Environment Court appeal against a decision by the Gold Coast City Council to approve an expansion of tourist development in an ecologically sensitive part of Springbrook, on the Gold Coast Hinterland.

Springbrook is an area of very high conservation value, similar in its outstanding biodiversity values to the nearby World Heritage listed Springbrook and Lamington National Parks. Portions of the site upon which the additional tourist cabins were proposed were identified under the relevant Springbrook Structure Plan as Nature Conservation Area, where no buildings or structures are allowed to be erected. Therefore the appellants, Ken and Jeanette O'Shea, Friends of Springbrook Alliance and the Gold Coast and Hinterland Environment Council (GECKO) banded together, represented by EDO(Qld), barrister Paul Howorth, town planner Chris Buckley and botanist Dr. Mike Olsen, to oppose the development.

After the appeal was lodged a site inspection by Dr. Mike Olsen and David Jinks showed the proposed cabin sites had an extraordinary concentration of rare and threatened species not identified by the developer or Council. The developer then moved the location of the development elsewhere on the site, but still within the Nature Conservation Area, and also upgraded the wastewater system to bring the wastewater disposal area out of the rainforest.

This is an important precedent case for the Springbrook Area as the additional

cabin development approved by Council and changed by the developer still breaches the density restrictions in the planning scheme and intrudes into the Nature Conservation Area on the justification that the development is small and that the developer is donating some other less ecologically significant land at another site.

A judgment has not yet been given and is not expected for several months. The team remains hopeful that the amended development application will be refused so as to uphold the plan and significantly discourage the incremental destruction of the ecological values of Springbrook.

Grateful thanks to experts Chris Buckley and Dr Mike Olsen, barrister Paul Howorth, Sheila Davis of GECKO and Ken and Jeanette O'Shea for their hard work on this important appeal.

*For more information about the case, contact Jo Bragg or Larissa Waters at EDO (Qld).*

### **Mirbelia Street bushland planning appeal will protect significant trees**

Bulletin readers would remember EDO(Qld)'s efforts to preserve approximately 6 hectares of urban bushland in Kenmore from a 27 lot development approved by the Brisbane City Council. The recent Planning and Environment Court appeal, which took 6 days in Court in June 2003, followed on from last year's win by local group representative Ruth Cordiner against the same development, where the development application was discovered to be defective and needed to be re-made.

In this year's appeal, the Mirbelia Street Action Group with its solicitors EDO (Qld), barrister Chris McGrath, town planner Lochlan Mummery and ecologist Glyn Thomas argued that the land was part of the Green Space System under the old Brisbane City town plan so the development conflicted with the Strategic Plan, and contained an endangered regional ecosystem. Unfortunately, the Court took a restrictive approach to what constituted areas of Green Space and decided that despite having some Green Space values, the land was not Green Space and the development could proceed. However, the team has been asked by the Court to suggest conditions to be placed on the development in order to protect significant trees, and are currently working on identifying these trees and suggesting wording for conditions. Through the actions of the Mirbelia Street Action Group, the development has been reduced from 44 lots to 31 (including several existing lots), and they expect to gain significant improvements to conditions to protect McKay Brook and on-site vegetation. Congratulations to the Group for their valiant efforts, and thanks to Chris McGrath, Lochlan Mummery and Glyn Thomas for their hard work.

*For more information about the case, contact Jo Bragg at EDO (Qld).*

### **Cairns endangered vegetation clearing case settled**

Many North Queensland EDO members have been anxiously awaiting the trial of the *Balatox v State of Queensland* case, which was due to commence on 20 August 2003. The case arose out of a refusal by the Department of Natural Resources and Mines to grant a permit to clear vegetation adjacent to the Clifton Beach suburb, just north of Cairns. Clearing had become necessary as a result of a condition requiring the construction of a road, as part of the preliminary approval for a major residential subdivision between Clifton Beach

and Palm Cove. The application for approval to clear was refused by DNRM on the basis that the permit sought to clear vegetation that was part of an endangered regional ecosystem.

On 20 August 2003, the matter was settled, with the terms of settlement referring to an exemption in the Code for Clearing of Vegetation on Freehold Land, which allows for clearing of vegetation types that would otherwise be protected if the clearing is essential for the establishment of a necessary road and no suitable alternative site exists. In this case, monies spent by DNRM in defending the appeal might have been better contributed to assist the continual upgrading of ecosystem maps.

*For further details contact Joanna Cull of EDO-NQ on (07) 40314766 or email [jcull@edo.org.au](mailto:jcull@edo.org.au)*

### **EDO-NQ Community Planning and Water Workshops**

EDO-NQ has been putting considerable time and effort this year into reaching out to the North Queensland community and providing the necessary skills for effective participation in environmental decision making processes in Queensland. At the annual Cairns and Far North Environment Centre in Cairns August, EDO-NQ solicitor Joanna Cull presented a seminar on Queensland's *Water Act 2000* and in particular on the water planning processes provided for by that Act. Any North Queensland community members interested in finding out how they can be involved in the preparation of Water Resource Plans and Resource Operations Plans in their region should contact EDO-NQ for a similar seminar. In September, EDO-NQ presented a workshop jointly with Kuranda Envirocare on making submissions on IPA planning schemes, with a specific focus on the Mareeba Shire Planning Scheme, which is currently out for public comment. A number of North Queensland local governments are due to release their IPA planning schemes shortly and community members interested in influencing the outcome of these planning processes should again contact Joanna Cull at EDO-NQ on 4031 4766 or [jcull@edo.org.au](mailto:jcull@edo.org.au). Also, don't forget the EDO publication "Getting Involved in Planning Under the Integrated Planning Act" available free to community groups by phoning either office.

### **Opportunity for comment on the Commonwealth's role in managing salinity**

The House of Representatives' Standing Committee on Science and Innovation is conducting an inquiry into the Commonwealth's role in managing and coordinating the application of the best science in relation to Australia's salinity programs. Public submissions to the Inquiry are due by **17 October 2003**.

*For further information visit*

*[www.aph.gov.au/house/committee/scin/salinity/index.htm](http://www.aph.gov.au/house/committee/scin/salinity/index.htm) or contact the Committee Secretariat on (02) 6277 4150 or email [scin.reps@aph.gov.au](mailto:scin.reps@aph.gov.au).*

### **Annual General Meeting News**

On 16 and 23 September 2003 respectively, EDO(Qld) and EDO-NQ held their Annual General Meetings. Both were well attended, with EDO(Qld) having the pleasure of guest speaker barrister Paul Mees, who discussed his fascinating successful EPBC Act court challenge to a misleading freeway project referral by the Victorian government. If you missed Paul, read more about his case and its

ramifications for referrals and environmental impact assessment in our May 2003 Bulletin!

Election of members of the committees of management at the respective AGMs saw some changes to each EDO - EDO(Qld) welcomes newcomer John Llewellyn, and farewells Poh-Ling Tan, whose wonderful contribution to EDO(Qld) over the years will be sorely missed. EDO-NQ sadly farewells long time Treasurer Vaughn Edwards, and wishes him all the best. EDO-NQ will elect a new treasurer to fill Vaughn's shoes shortly.

Keep an eye out for the annual Staff Report (detailing all the activities of EDO(Qld) in the last year), Chair's Report and Treasurer's Report for the 2002-2003 financial year on the EDO(Qld) website soon!

Lastly, thanks to all new and renewing members for your continued financial support of the EDO via memberships and donations. Your generosity and membership is appreciated and helps us undertake the important work we do at EDO.

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