



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF
NORTHERN QUEENSLAND INC.



BULLETIN – February/March 2004

What's in this Bulletin?

EDO Staff have still been working extremely hard contributing to the detail of the reforms to the Queensland Vegetation laws (details next month!), which is why we have not managed to get this Bulletin out to you until now. We hope you agree with our priority - to score for the environment during this historic window of opportunity! This Bulletin outlines exciting progress towards implementation of the world-first Reef Zoning Plan. We report on development conditions achieved in the Mirbelia Street Action Group planning appeal and how 14 years after conclusion of the Magnetic Keys case, Townsville City Council recently tried unsuccessfully to pursue environmentalist Julia Walkden for costs. We also include information on newly commenced Indigenous Cultural Heritage legislation.

Great Barrier Reef Zoning Plan through Senate

On 24 March 2004 the world-first GBR Representative Areas Zoning Plan (referred to in our December 2003 Bulletin) made it through the Senate. Under Commonwealth legislation, the Zoning Plan was required to be laid before both houses of Federal Parliament where it risked a motion of disallowance but no such motion was made. The Zoning Plan is expected to be implemented by the Commonwealth and Queensland by mid 2004. According to the WWF Australia, when this plan is implemented, a third of the Marine Park will be protected by a network of marine sanctuaries that stretch from the Park's northernmost to southern boundaries. This network of sanctuaries will protect over 11 million hectares of the Marine Park. This is an absolutely outstanding reform! However as always it is important to monitor implementation of reforms to see them firmly in place.

For more information, contact Imogen Zethoven at WWF or see http://www.wwf.org.au/News_and_information/Features/feature06.php

Judge says take down Tennis Court and Revegetate Riparian Area

Last year Judge Robin approved a material change of use and subdivision application at Mirbelia Street, Kenmore Hills. On 24 February 2004, in the Planning and Environment Court, Judge Robin agreed with well-presented submissions made by barrister Mr. Chris McGrath for the Mirbelia Street Action Group and ordered that the approval include a number of additional conditions to those originally required by Brisbane City Council. Those extra conditions were to protect significant trees, to establish more building locations envelopes to restrict building, and to expand vegetation protection areas. Of particular interest is that his Honour ordered that part of an existing tennis Court be removed with the area replanted to better protect McKay Brook. The Action Group will be vigilantly watching that the development complies with the conditions.

This case shows that community groups can achieve significantly improved conditions even when Council approves a development and when Council spends considerable public resources

(estimated to be over \$100,000 on legal fees and expert fees over 2 appeals) arguing in favour of the development. It was unsatisfactory that Brisbane City Council, having approved the development, was not then prepared to support some of the additional conditions proposed by Mirbelia Street Action Group. For example, Council's own policies argue for better protection of watercourses so why didn't Council support removal of the Tennis Court and revegetation?

EDO Qld were solicitors for the Action Group in Mirbelia Street Action Group v Brisbane City Council and Greymouth Pty Limited, BD 548 of 2003. For more information contact Jo Bragg at EDO Qld.

Townsville Council loses battle to pursue Julia Walkden for costs

Fourteen years ago Julia Walkden bravely but unsuccessfully appealed on environmental grounds against a controversial 239 bed hotel and home unit development proposed for Nelly Bay, Magnetic Island by Magnetic Keys Ltd. The appeal lasted 28 days. Under the planning legislation then in force, Judge Wylie QC ordered that Ms Walkden pay to Townsville City Council and the developer 80% of their costs. Despite changes in community values to favour protection of precious natural assets, Townsville City Council recently sought leave of the District Court to take enforcement action to enforce the Costs order which would bankrupt Julia Walkden. However Judge Brabazon of the District Court refused leave on the basis that "the dominant fact is that fourteen years have passed from the original judgment to the application for leave to enforce the costs order". In an ironic twist, Townsville City Council was ordered to pay Ms Walkden her costs of its recent unsuccessful leave application.

The planning laws have changed so that you can now argue genuine environmental grounds without fear of costs- see EDO Appeals Factsheets our website. Late last year amendments to the *Nature Conservation Act 1992* instigated by EDO Qld and Carol Booth granted "legal standing" for third parties/environmentalists to stop commission of offences, with favourable cost rules. Litigation is always costly, but in order for the community to run *some* important public interest cases without being bankrupt we need these "each side pays your own costs" provisions in *all* environmental laws.

For a copy of the recent Judgement, contact EDO Qld, EDO NQ or go to the Qld Courts website at <http://www.courts.qld.gov.au/qjudgment/QDC2004/QDC04-023.pdf>.

Indigenous Cultural Heritage Protection Laws Commence

Readers will recall from last year's October Bulletin that on 28 October 2003 the Queensland Parliament passed the Aboriginal Cultural Heritage Bill 2003 and the Torres Strait Islander Cultural Heritage Bill 2003 ("the Acts"). The Acts commenced operation on 16 April 2003, repealing and replacing the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* (Qld). The Acts provide stronger protection for Indigenous Cultural Heritage, with a new broader focus upon protection of areas or objects of significance to Indigenous people as opposed to the old narrower focus on protection of remains, objects, rock-art and archaeological sites. The Acts also enable Indigenous people to protect the secrecy of cultural heritage by providing for protection of sites of significance irrespective of whether they have been registered or not. The Acts are underpinned by the newly created cultural heritage duty of care, which is imposed upon anyone carrying out any activity in Queensland. Duty of Care Guidelines, (which commenced on 16 April for the *Aboriginal Cultural Heritage Act*), have been developed to assist proponents in compliance with the duty of care and these guidelines place a strong emphasis on consultation with relevant Indigenous persons. Significant penalties for breaching the cultural heritage duty of care and for other offences should also assist to protect Indigenous cultural heritage in Queensland. The EDOs welcome the introduction of the Acts and look forward to improved protection of Indigenous cultural heritage in Queensland.

For further information contact Joanna Cull at EDO-NQ on (07) 4031 4766 or jcull@edo.org.au.

Thank you QELA!

EDO Qld would like to thank the Queensland Environmental Law Association (QELA) for their generous donation of the proceeds of their seminar 'Fathoming the EPBC Act – Updates, Caselaw and Useful Tips' to EDO Qld. This well attended seminar on Commonwealth environmental laws was held on 1 March 2004 and speakers included Larissa Waters of EDO Qld and Barrister Chris McGrath.

For a copy of the EPBC Act QELA seminar papers contact QELA on 07 3832 4865 or info@qela.org.au.

Call for Expressions of Interest – EPBC Unit Workshops

The EPBC Unit of WWF Australia and the Tasmanian Conservation Trust are holding educational workshops on the Commonwealth EPBC Act. If you would like to ask for an EPBC workshop to be held in your region and know at least 10 people in your region likely to attend, contact the EPBC Unit below. The workshops and the publications are free of charge.

Expressions of interest should be sent to: Lyndall Kennedy, EPBC Unit Coordinator, WWF Australia and the Tasmanian Conservation Trust, or email: lkennedy@wwf.org.au or fax: (02) 6257 4030.

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