



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF
NORTHERN QUEENSLAND INC.



BULLETIN - June 2004

What's in this Bulletin?

Don't miss the landmark Federal Court win by the Commonwealth government against wheat farmer Mr. Ronald **Greentree** or the updates on the Meander Dam and Nathan Dam Court cases. The Bulletin then discusses the important issue of **Court costs** in planning and environment litigation, including commenting on the **Cooloola Ratepayers Case**. In the **Glowworm Appeal**, Gold Coast environmentalists with expert assistance achieve significant improvements over Council's decision. For central Queenslanders, see the details of **vegetation law workshops** EDO staff are running in late July in Rockhampton and Baralaba, while in Brisbane there is also a great strategic planning workshop for environmental advocates. The Bulletin also addresses the excellent moves to restrict development north of the **Daintree**, advises changes to planning scheme completion deadlines and briefs you on **amendments to the Environmental Protection Act**. There is a job going at EDO-WA. And hey, did you hear that EDO has launched a new **Community Planning Advocacy Centre**? Read on...

Win for Wetlands and Commonwealth Government in Greentree Case

On 11 June 2004 Justice Sackville found that Ronald Greentree and the company he controlled, Auen Grain Pty Limited had contravened s16(1) of the EPBC Act by clearing vegetation, ploughing and sowing wheat on a privately owned part of the Gwydir Wetlands in New South Wales. The wetlands are listed under the RAMSAR Convention signed by Australia in 1974, which protects internationally significant wetlands. Justice Sackville found that Mr. Greentree and Auen were each liable to a civil penalty and that the basis for injunctive relief (to stop future possible illegal activities) was established. A separate hearing will determine the level of penalties and whether a remediation order is appropriate. We warmly congratulate the Commonwealth Environment and Heritage Department and Minister Kemp for this excellent result in holding farmer Greentree accountable.

Readers will know from our April-May 2004 Bulletin that another EPBC Act court case, concerning the environmental impact assessment of the proposed **Nathan Dam** and run by solicitors EDO Qld on behalf of clients QCC and WWF, was heard by the Full Federal Court on 19 May 2004. We still await the Full Court's decision.

*For more information about the **Greentree case** see the Commonwealth Department of Environment and Heritage's site <http://www.deh.gov.au/epbc/compliance/judgements/index.html> or for the Judgement, see http://www.austlii.edu.au/au/cases/cth/federal_ct/2004/741.html.*

Court Costs News – Tasmanian Meander Dam and Cooloola Planning Appeal Costs Decisions

In the recent **Mees case** (see April-May 2004 Bulletin), Mr Mees' unsuccessful challenge to the EPBC Act approval of the Scoresby Freeway in Melbourne resulted in an order for Mr Mees to pay half the Minister's costs. However in a different case the Tasmanian Conservation Trust (TCT) was able to discontinue its Court challenge to a proposed dam in Tasmania's Meander Valley on the basis that *each side pay its own costs* after a ruling by Justice Jacobsen of the Federal Court on 7 July 2004. The TCT had sought to challenge the federal Minister's EPBC Act approval of the **Meander Dam**, with the Rivers and Water Supply Commission and the State of Tasmania were also involved in the case. Once it was discovered that the species of heath plant at risk from the proposed dam was not the endangered

epacris exserta, the merits of TCT's case diminished. In a welcome judgement, Justice Jacobsen found that the TCT had not unreasonably delayed in discontinuing the case and this influenced his decision on costs.

In other costs news, a decision of the Queensland Planning and Environment Court gives a warning to submitter appellants about the need for substantial expert evidence in **town planning appeals**. Mr Lightfoot (not a client of EDO) challenged a development approval decision of the Cooloola Shire Council but failed to present any town planning, traffic, environmental or other expert evidence to the court, made some unfounded factual assertions, and did not relevantly cross-examine the other parties' witnesses. His Honour Judge Robertson found that the case was frivolous (it had no serious prospects of success), and that given the 'residents' group Mr Lightfoot purported to represent included almost no residents and Mr Lightfoot had been "on a frolic of his own", the case was also vexatious. Usually town planning appellants (such as GECKO below in the Glowworm Case) do make successful efforts to secure extensive expert evidence, so generalisations cannot be drawn from Mr Lightfoot's case, but it serves to reinforce what EDO solicitors regularly advise clients- without expert evidence, appellants will not succeed in the Planning and Environment Court, and risk adverse costs orders.

*For more information contact Larissa Waters at EDO Qld, or see judgements *Tasmanian Conservation Trust v Minister for Environment and Heritage and Ors* [2004] FCA 883 at http://www.austlii.edu.au/au/cases/cth/federal_ct/2004/883.html, or *Cooloola Ratepayers and Residents Association Inc v Cooloola Shire Council & Anor* [2004] QPEC 018 via http://www.courts.qld.gov.au/qjudgment/pe04_001.htm.*

Glowworm Appeal Achieves Significant Improvements

Recently a town planning appeal by GECKO– Gold Coast and Hinterland Environment Council and Ken & Jeanette O'Shea against the Gold Coast City Council's decision to retrospectively authorise expansion of a pottery gallery and café at Springbrook called "Forest of Dreams" concluded. Over 20 years the business owner had expanded the operation from a pottery facility to a café, forest walk and recently an artificial glow worm "experience" catering largely to tourist groups in buses, without seeking Council approval and despite the site bordering world heritage rainforest and containing many significant environmental values.

GECKO and the O'Sheas were concerned about Council's approval of a significant tourist facility in an environmentally sensitive area and engaged solicitor Rob Stevenson of Nathan Lawyers, barrister Paul Howorth and experts Neil Sutherland (wastewater), Roger Brameld (traffic), John Panaretos (planning) and Shary Braithwaite (ecology) who agreed to act on a pro bono/reduced fees basis. Ultimately the parties agreed to settle the appeal on the basis of significant changes to the development plan, including:

- Major improvements to the wastewater treatment and disposal;
- Restriction on the floor space of the café, deck, pottery shop/gallery/studio and glow worm walk, and approval for only a short walking track;
- A requirement for the submission of a vegetation and landscape management plan; and
- Restrictions on traffic access and hours of operation.

These restrictions should help to maintain the ecologically important character of the area, and the case demonstrates the achievements that can be made by involving knowledgeable and well regarded experts and being proactive in seeking improvements to Council's decision.

Our thanks go to solicitor Rob Stevenson for this article and to Rob and all the clients and experts who contributed to the outcomes in this case. For more information about this case contact EDO Qld or email Robert Stevenson on rstevenson@nathanlawyers.com.au.

Douglas Shire Council Moves to Restrict Development North of Daintree

The Douglas Shire Council has introduced a draft local planning scheme that will restrict new development north of the famous Daintree River. Public Submissions close on 3rd September 2004. Further, to stop a rush of development applications prior to finalisation of that plan, on 2 June 2004 Council adopted a temporary local planning instrument to bring the draft scheme into effect. Please

make a submission on the draft plan to express your support for this excellent initiative to protect the world class conservation values of the lowland Daintree area.

For more information on the draft planning scheme and temporary planning instrument, contact Douglas Shire Council Liaison Officer on phone (07) 4040 6565 or website http://www.dsc.qld.gov.au/Page/Page.asp?Page_id=228. Also see the Wilderness Society's website http://www.wilderness.org.au/campaigns/forests/queensland/Daintree_survives/.

For more information about how and why to comment on draft planning schemes, get a copy of EDO Qld's booklet "Getting Involved in Planning Under IPA", available free to community groups.

Community Planning Advocacy Centre ("CPAC") Launched

Principal Planner Brian Feeney and a dedicated band of community conservationists have now launched a new "community planning program" under the EDO Qld umbrella, attracted in equal measures by compatibility of the CPAC and EDO goals and the benefits of CPAC sharing EDO insurance. In short, CPAC will use professional planners (starting with a part-time role by Principal Planner Brian Feeney) to research public interest planning issues and to support and represent community groups in South-East Queensland. Financial support is urgently needed for this excellent venture. A good working relationship with the Planning Institute of Australia's Planning Aid will be maintained. Planning Aid currently does not directly provide advice to the Queensland public due to lack of insurance.

For more information, including a newsletter giving details of the aims and workplan for this program, or to donate, contact EDO Qld office or Brian Feeney on bj_feeney@hotmail.com.

Changes to the assessment processes under the Environmental Protection Act still not law

Changes made to the *Environmental Protection Act 1994* ('EP Act') in late 2003 are expected to commence in November 2004, and will mean that all non-mining "environmentally relevant activities" ('ERAs') under the EP Act will be assessed using the Integrated Development Assessment System ("IDAS") process established by the *Integrated Planning Act*. Until these changes commence, *some* ERAs (eg for mobile activities) will still be assessed *outside* the IDAS process, despite most other ERAs using IDAS– the varying assessment processes creating confusion. Once commenced, the amendments will also include an assessable development trigger for contaminated land, meaning that relevant proposals involving contaminated land will require a development approval. *For more information about the changes made to the Environmental Protection Act, contact Larissa Waters at EDO (Qld).*

Changes to Planning and Environment Court Rules on Service of Appeals still not law

Important changes to Planning and Environment Court appeal rules by clauses 79-82 of the *Integrated Planning and Other Legislation Amendment Act 2003* ('IPOLAA 2003') have still not commenced! These changes to the rules about service of Appeal Notices rules and joint submitter appeals are critical for submitter appellants challenging Council development approvals, but despite the Act being passed in late 2003 (see our October 2003 Bulletin), these particular clauses have not yet taken effect. It is essential to check you are using current rules if you are considering an appeal. *For more information about the changes made by IPOLAA 2003, contact Larissa Waters at EDO (Qld).*

Another Planning Scheme Deadline Extension!

In other IPA news, the 30 June 2004 deadline for Council finalisation of IPA-compliant planning schemes has again been extended. Cabinet has now agreed on individual deadlines for Councils throughout 2004 and 2005. Check with your Council on their IPA-scheme timetable and grab all available opportunities for formal and informal public comment on this critical development agenda-setting process! *For more information about how and why to comment on draft planning schemes, get a copy of EDO Qld's booklet "Getting Involved in Planning Under IPA", available free to community groups.*

EDO Vegetation Workshops in Rockhampton and Baralaba

So, you'd like to hear all about the historic move to end clearing of mature forest in Queensland? And you'd prefer lots of real life practical examples, with a bit of campaign history and ecology thrown in? EDO Qld is holding workshops on the new veg. laws on Saturday 24 July 2004 in Rockhampton and Sunday 25 July 2004 in Baralaba. Jo Bragg and Larissa Waters of EDO Qld, who both worked on the draft legislation, will join with Stacey Robinson of Capricorn Conservation Council and Nicky Hungerford of the Queensland Conservation Council to present these workshops which are tailored to community conservationists. *For more information on bookings contact Jo Bragg or Larissa Waters at EDO Qld. Watch our bulletins for news of further vegetation workshops.*

Strategic Thinking, Planning and Doing – Brisbane workshop 29-30 July 2004

Training for Change and the Environmental Advocacy Project present the workshop "Getting Strategic: Tools for Strategic Thinking, Planning and Doing".

This workshop will provide environmental and social justice advocates with an opportunity to learn new skills in strategic thinking and planning to add to your activist toolkit. Four seasoned trainers will facilitate two days of active and experiential learning on strategic campaign analysis and planning, including creating smart strategies, learning new tools for campaign planning, increasing creative skills and applying those skills and tools to your organisation. The workshop will be held at the Brisbane Powerhouse, New Farm on Thursday 29 and Friday 30 July 2004. Cost is \$220-\$550 sliding scale.

For more details contact Amy at workshops@environmentaladvocacy.org or 07 3875 4030, or see <http://www.environmentaladvocacy.org/resources/workshops/2004/strategy.html> for a registration form.

EDO-WA Seeking Second Solicitor

The Environmental Defender's Office WA (EDO) is seeking a full time solicitor to provide legal services for a new outreach service (travel required), a 12 month water law project, and assistance to the Principal Solicitor. Background in environmental law and commitment to community legal education highly desirable. Perth based. Salary \$48-52K + super and high job satisfaction. Closing date: C.O.B. Friday 23/7/04. *For details contact the EDO WA on 9221 3030 or email lsimpkin.edowa@edo.org.au.*

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