



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF  
NORTHERN QUEENSLAND INC.



## BULLETIN – 2004 Round-Up

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### What's in this Bulletin?

*This Bulletin gives a round-up of some fascinating legal information and bold actions by your EDO offices during late 2004. We congratulate the EPA and DEH (Cth) and Ministers Ian Campbell and Desley Boyle for some great environmental enforcement results. There is a new Queensland Marine Parks Act influenced by EDO submissions, plus changes on the law concerning Submitter Appellants, Aboriginal Councils and Shelburne Bay. The much talked about Obi Obi Creek case on jurisdiction of the Department of Natural Resources to regulate watercourse banks is analysed.*

*We report that in December 2004, an EDO submission was lodged on the draft Extractive Industry State Planning Policy and with the help of Principal Planner Brian Feeney, on the crucial draft SEQ Regional Plan. We also update you on the new Wet Tropics Strategy, Great Barrier Reef Zoning Issues, including declaration of the extended Marine Park and the temporary local planning instrument limiting development in the Douglas Shire. Did you know that a new Solicitor has started at EDO-NQ, Kirsty Ruddock? And that Eva Illuk has moved on from the EDO-Qld and we are currently advertising for Eva's replacement administrator?*

*The draft SEQ Regional Plan is currently out for public comment as is the interim code of practice for native forest practices. EDO-Qld is currently planning workshops on the draft SEQ Plan, dates yet to be announced. And things are looking busy for 2005 with two new Court cases for EDO-NQ in Mackay and Yorkey's Knob, described in this Bulletin and continuation of two flying-fox cases for EDO-Qld as described in the EDO Alert! December 2004.*

*So why not read on or fly straight to those issues closest to your heart and interest.....*

### Case update from EDO-NQ

*While EDO-Qld has been working hard on flying-fox cases described in EDO-Qld Alert! circulated in December, EDO-NQ solicitors have been preparing the following two important cases.*

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

The EDO-NQ is representing Mackay Conservation Group in a Planning and Environment Court appeal that has been set down in the Planning and Environment Court in Brisbane for an 8 day hearing in March this year. The appeal is against the approval of a large coastal development at East Point in Mackay. The appeal will involve a range of expert witnesses including a geomorphologist, oceanographer, zoologist, ecologist, civil engineer and planner.

*Please contact Joanna Cull on [jcull@edo.org.au](mailto:jcull@edo.org.au) for further details.*

2. Yorkeys Knob Residents Association v Toma Group Pty Ltd

The EDO-NQ has also recently taken on a case for the Yorkeys Knob Residents Association which is listed on 14 February 2005 for three days. The case relates to a five and a half storey tourist development behind Yorkeys Knob Beach on a site that contains vegetation significant to the local community and a small wetland. *Contact Kirsty Ruddock on [kruddock@edo.org.au](mailto:kruddock@edo.org.au) for further details.*

### Opportunities for Comment – Have Your Say!

The following discussion papers and plans are currently open for public comment:

1. Draft SEQ Regional Plan – submissions due 28 February 2005; This draft plan released by the State Office of Urban Management fails to place an ecologically sustainable limit on population growth in SEQ and does not protect our threatened regional wildlife corridors. EDO-Qld is planning a series of workshops in Brisbane, Sunshine Coast, Redlands (5 February) and the Gold Coast to discuss the crucial plan, which overrides local planning schemes. EDO-Qld lodged a preliminary submission on the draft plan in December, prepared by Brian Feeney, Senior Planner for Community Planning

Advocacy Centre, a special project of EDO-Qld. If you would like a copy of the submission contact Jo Bragg on [jbragg@edo.org.au](mailto:jbragg@edo.org.au).

Contact EDO-Qld for details of workshop dates soon to be settled. See OUM's website for more information [www.oum.qld.gov.au](http://www.oum.qld.gov.au).

2. **New Interim Code for Native Forest Practices**- comments due 1 March 2005. This code will govern native forest practices on freehold land and was released for public consultation by Natural Resources Minister the Hon. Stephen Robertson. Stakeholders have until 1 March 2005 to lodge submissions on the interim code which comes into effect the same day. The interim code will then be reviewed taking into account stakeholder views. The Department is writing to key stakeholder groups with details on how to make submissions on the interim code. Copies of the interim code are available in the Vegetation Management section of the Department's website at [www.nrm.qld.gov.au](http://www.nrm.qld.gov.au).

For further details contact Joanna Cull at EDO-NQ on [jcull@edo.org.au](mailto:jcull@edo.org.au) or Louise Matthieson at the Wilderness Society on (07) 3846 1420 or email [bushland@wilderness.org.au](mailto:bushland@wilderness.org.au).

### **Submission lodged on Draft SPP Extractive Industries**

In December 2004, the EDO-NQ and EDO-Qld lodged a joint submission on the Draft State Planning Policy (SPP) for Extractive Industries. The SPP outlines the ground rules for how development that is not compatible with extraction within the 98 Key Resources Areas will be assessed. EDO's primary concern with the SPP is that its focus on preserving development rights in key resource areas without properly considering associated environmental implications is not in accordance with the purpose of the Integrated Planning Act, namely to seek to achieve ecological sustainability. For example it will allow endangered regional ecosystems to be cleared.

Information on the draft policy and the related guidelines, can be obtained from the Department of Natural Resources and Mines on (07) 3224 2537 or at [www.nrm.qld.gov.au/mines/spp\\_extract\\_resource.html](http://www.nrm.qld.gov.au/mines/spp_extract_resource.html).

Contact Kirsty Ruddock of EDO-NQ for a copy of the EDO submission.

### **New Marine Parks Legislation for Queensland**

On 7 October 2004, the Queensland Parliament passed the *Marine Parks Bill 2004*. The new legislation is the result of a review of the *Marine Parks Act 1982* to strengthen the marine parks and achieve modern standards for conservation, management and ecologically sustainable use of marine parks. The *Marine Parks Act 2004* brings in new provisions to deal with establishment and revocation of marine parks, reclamation of tidal land, zoning and management plans, general enforcement provisions and review procedures.

The EDO-Qld and EDO-NQ made a joint submission on the review. Some of the EDOs' comments have been reflected in the legislation. The *Marine Parks Bill* originally had detailed objects including ecologically sustainable development, which suggested that development was likely to occur in these areas. These provisions have been removed. Further, the revocation procedures have also been amended to ensure that certain procedures have to be followed to revoke a marine park, and that revocation cannot occur by way of Regulation, unless there is a parliamentary motion supporting such revocation and notice given of the debate.

The new Act also adopts the EDO's suggestions in relation to standing, granting environmentalists and groups the same standing rights as under other Acts such as the *EPBC Act* and *Nature Conservation Act*, to seek **judicial review** of decisions made under the Act. The EDO had also made submissions seeking to allow **third parties to take enforcement action** in relation to all of the offences created under this Act. However the third party rights have been limited to only 2 of the 9 offences in the Act - the power to bring enforcement orders to remedy or restrain entry or use of the Park for a prohibited purposes, and unlawful serious environmental harm.

The Act can be found via [www.legislation.qld.gov.au/Bill\\_Docs/BI151\\_04.htm](http://www.legislation.qld.gov.au/Bill_Docs/BI151_04.htm). For more information contact Jo Cull at EDO-NQ.

### **Important Legal Changes for Submitter Appellants, Aboriginal Councils and Shelburne Bay**

The *Integrated Planning Act 1997* was amended during 2004. **Submitter Appellants** need to be aware that there are now new tight time lines for service of Notices of Appeal and new additional agencies must be served with any Notices of Appeal. If not served correctly your appeal might not be valid. If you are planning to appeal, contact EDO-Qld or EDO-NQ for more details.

The *Mineral Resources Amendment Regulation (No. 1) 2004*, was passed 5/10/2004, which creates Restricted Area 320 over approximately 33,000 hectares of the **Shelburne Bay** district, which adjoins an existing Restricted Area covering the rest of the Shelburne Bay dune fields. Together, these two instruments protect the unique environmental and cultural significance of Shelburne Bay against all future mining activities. Further, a company which recently lodged an application to explore for mineral sands at Shelburne Bay has now withdrawn the application.

The *Local Government (Community Government Areas) Act 2004*, commenced fully on 1 January 2005 and replaces provisions of the *Community Services (Aborigines Act) 1984* regulating Aboriginal Councils on DOGIT communities. The *Local Government (Community Government Areas) Act 2004* largely applies the *Local Government Act 1993* to Aboriginal Councils, but with some special provisions due to the unique nature of Aboriginal Councils and with some laws being phased in over a four year period. The new Act will ensure that Aboriginal Councils are formally recognized as shires under the *Local Government Act 1993*. The provisions of the *Community Services (Aborigines) Act 1984* that regulated land management and justice issues will remain, but with the Act renamed as the *Aboriginal Communities (Justice and Land Matters) Act 1984*.

To access copies of these new laws, visit [www.legislation.qld.gov.au/Legislation.htm](http://www.legislation.qld.gov.au/Legislation.htm).

### **Boundary of Obi Obi Creek decided in Cornerstone Action**

A large group of residents of Maleny have continuously opposed a proposal to build a supermarket on land bordered by the Obi Obi Creek and situated in Bunya Street, Maleny. Obi Obi Creek is the home of a diversity of native wildlife including platypus which burrow many metres in its shallow banks.

The developer previously gained approval for the supermarket subject to conditions that were the subject of an appeal by the developer to the Planning and Environment Court. Local residents were unable to participate in that appeal as the development was not classified as "impact assessable" under the relevant planning scheme.

A later Department of Natural Resources inspection of the site led the DNR to doubt the validity of the development approval for operational works gained by the developer and to issue a compliance notice to the developer to stop clearing on the site. The issue was whether the development intruded into a "watercourse" as defined under the *Water Act 2000*. If it did then arguably the original development application was not properly made due to lacking the consent of the "owner" of the watercourse (DNR). Another issue was whether the development application should have been referred to the DNR as part of the assessment process.

The developer sought a declaration in the Planning and Environment Court. Judge Rackemann made two of the three declarations sought by the developer. His Honour decided that on the facts of this case and a detailed analysis of the *Water Act 2000* definition of watercourse, the banks of Obi Obi Creek were as contended by the applicant developer and did not extend to the more generous line marked out by the DNR officer. His Honour declared that the development application did not require referral to the DNR.

The DNR is concerned this decision will adversely affect its ability to manage watercourses and is considering legislative amendments to the *Water Act 2000*. EDO considers the State needs strong regulatory tools to protect and rehabilitate riparian areas, not merely areas that come within the current limited technical definition of bed and banks of a watercourse.

*The decision Cornerstone Properties Ltd v Caloundra City Council & Anor [2004] QPEC 044 is available via [www.courts.qld.gov.au/qjudgment/pe04\\_001.htm](http://www.courts.qld.gov.au/qjudgment/pe04_001.htm). For more information contact Jo Bragg of EDO-Qld on [jbragg@edo.org.au](mailto:jbragg@edo.org.au).*

### **State Protects Daintree from Pro-development Council Using IPA Powers**

In June 2004, the Douglas Shire Council implemented a Temporary Local Planning Instrument ("TLPI") over 450 hectares between Alexandra Range and Cape Tribulation that prevented developments being approved until the new planning scheme was finalised. This was in response to a flood of development applications that had been received prior to the development of a new planning scheme for the area. The area that was subject to the TLPI was outside the World Heritage area but said to be of high conservation value and to contain double the number of rare and threatened species as the adjoining World Heritage area.

On 14<sup>th</sup> September 2004, the Douglas Shire Council revoked the TLPI while various council members were absent. Two days later after discussions with the Council, the Minister for Environment, Local Government, Planning and Women, Desley Boyle used her powers under the *Integrated Planning Act 1997* to reinstate the TLPI. The area will now be protected from development until the new planning

scheme is finalised. We heartily congratulate Minister Boyle 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).*

### **Wet Tropics Conservation Strategy**

The Wet Tropics Management Authority has released the Wet Tropics Conservation Strategy during 2004. The Conservation Strategy is designed to supplement the *Wet Tropics Management Plan 1998*, by outlining strategies to achieve conservation, rehabilitation and transmission to future generations of the Wet Tropics World Heritage area by working in conjunction with the entire community to manage the whole Wet Tropics bioregion.

*More information can be found at [www.wettropics.gov.au](http://www.wettropics.gov.au) or call (07) 4052 0555.*

### **Great Barrier Reef State and Commonwealth Zoning Issues**

On 1 July 2004, the new Commonwealth *Great Barrier Reef Marine Park Zoning Plan 2003* commenced.

The new zoning plan is designed to amalgamate the park into one zoning plan. It also increases the number of marine national park zones or green zones (no take zones) from 4.5% to 33.1% and decreases the amount of general use zones from 78% to 33.8%.

The Commonwealth's zoning of the Great Barrier Reef Marine Park (GBRMP) extends from the low water to beyond the continental shelf. It excludes waters internal to Queensland which commence at the low water mark and include internal waters such as estuaries, rivers, creeks, channels and significant mangrove forests.

On 20 October 2004, the Queensland Government in response unveiled the new Great Barrier Reef Coast Marine Park. The new marine park took effect on 5 November 2004. The park ensures consistency in application of zoning and activities permitted within a zone adjacent to the GBRMP. The proposed zoning will have the same use and entry provisions as the new Commonwealth zoning for GBRMP, and will extend to the high water mark.

It will not however include estuaries, rivers, creeks, channels, and mangrove forests that are not already in State marine parks. Beach fishing will still be permitted along 85% of the Great Barrier Reef coastline, while most of the beaches where fishing will be banned are remote and barely accessible. Following the public consultation process, recreational fishing will also be permitted in four designated areas-Sabina Point and McDonald Point in Shoalwater Bay, an area next to Charon Point Conservation Park and selected beaches on Bamborough Island.

*More information about the new Great Barrier Reef Coast Marine Park can be found on the Queensland EPA website at [www.epa.qld.gov.au](http://www.epa.qld.gov.au) or by phoning 1800 177 291.*

### **Biodiscovery Act 2004 has commenced operation**

EDO members may be aware that following the Queensland Biodiscovery Discussion Paper, released in May 2002, Queensland's Draft Biodiscovery Bill ("Draft Bill") was released in June 2003, with the final Bill introduced to Parliament in May 2004. The Bill was passed in August 2004 and commenced in November, making it the first biodiscovery specific legislation in Australia. Unfortunately a number of the issues raised by various interest groups in submissions on the Draft Bill were not addressed prior to its enactment. Failure to include the precautionary principle; failure to provide for public notification and appeals in relation to collection authorities; exclusion of the application of the *Freedom of Information Act 1992* in a range of circumstances and failure to recognize and protect Indigenous traditional knowledge and ensure equitable sharing of benefits with owners of traditional knowledge are particularly disappointing aspects of the new legislation.

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

### **Five State and Commonwealth Enforcement Actions – Congratulations!**

Congratulation to the Queensland EPA, the Commonwealth Environment and Heritage Department and to Hon. Ministers Desley Boyle and Ian Campbell for taking vital and successful enforcement action in the following five cases!!

#### **1. Barramundi Waters Successful EPA Prosecution**

A North Queensland company and its director have been ordered to pay more than \$285,000 in fines and research and development to assist wildlife conservation after pleading guilty to charges related to the large-scale illegal shooting of protected native birds.

Mr Phillips, who pleaded guilty to the charges under Section 88 of the *Nature Conservation Act 1992*, admitted at least dozens and probably hundreds of birds (including pelicans, striated herons, masked lapwings and a number of other species) had been shot at the company's aquaculture facility at Cowley, near Innisfail, between June 2002 and August 2003.

He told the Court he realised the method of dealing with the problem would inevitably result in the death of birds and regretted those events.

The Magistrate convicted and fined the company \$35,000 and ordered that Mr Phillips pay \$250,000 (\$50,000 per annum) over the next five years toward the cost of developing pond management systems to prevent bird mortality.

For more information contact Joanna Cull at the EDO-NQ on 4031 4766 or email [edong@edo.org.au](mailto:edong@edo.org.au).

## 2. Minister stops work on Cairns Courthouse in heritage dispute

On 21 October 2004, the Minister for the Environment Desley Boyle halted work on the Heritage listed Old Cairns Courthouse building. The owner had begun work on the historical site without approval from the Environment Protection Agency (EPA) and ignored earlier instructions from an Environmental Protection Agency officer to cease work on the site. The original fence had been replaced, minor interior alterations had been undertaken and a large mature tree has been removed from the front of the property.

Desley Boyle ordered a stop work order under powers granted to the Minister under s.58 of the *Heritage Act 1992* (QLD) which allows the Minister to order the cessation of any work that may destroy or reduce the cultural heritage significance of a place. The order prevented further work being conducted for a period of eight weeks. The developer had to establish during this time that the work proposed is consistent with the *Heritage Act* requirements for listed properties.

The EDO-Qld and EDO-NQ commend the Minister who has showed a continuing commitment to pursuing positive environmental and heritage outcomes particularly for Far North Queensland.

## 3. Prosecution of ship-owner and officers for destroying reef

In November 2004, the owner and second officer of the bulk carrier Doric chariot pleaded guilty to breaches of the *Great Barrier Reef Marine Park Act 1975*. The carrier ran aground on Piper Reef, 600 km north of Cairns and within the Great Barrier Reef Marine Park. The incident destroyed a 1500m<sup>2</sup> area of reef in July 2002. Tributyltin contamination from the ships anti-foulant occurred, causing fears of long term environmental harm. Luckily no oil was spilled in the accident.

The owner and ships officers faced maximum fines at up to \$1.1 million although the Cairns Magistrates Court did not feel the accident warranted such a high penalty. The ships owner was fined \$ 100 000 and the officer in charge at the time of the accident was fined \$10,000. The ships owner also contributed the costs of an extensive clean up program after the incident.

## 4. Feng shui Development charged with Serious Environment Damage

Red Peak Forest Estate Pty Ltd, responsible for a residential development in Cairns was charged in late October 2004 and summonsed to appear the Cairns Magistrates Court in relation to four charge's including one charge of serious environmental harm, one charge of material environmental harm and two counts of environmental nuisance.

The alleged offences occurred when the developers cleared a large area of land in February before the onset of the wet season. The EPA alleges that insufficient measures were taken to prevent runoff, resulting in more than 1000 tonnes of sediment washing into a near by creek system. The EPA will argue that the likelihood of heavy rainfall at that time of year (during the wet season) and the lack of appropriate action to restrict runoff constitutes environmental harm. Ironically the development has been marketed as being designed by feng shui experts to achieve harmony with the earth's energy. If found guilty, the company could face fines of up to \$1.5 million. Congratulations to the EPA for pursuing this matter. Congratulations also to several EDO-NQ members who have assisted the EPA by providing evidence over the past few years of the results of poor erosion controls on the creeks and rivers in the Cairns region.

## 5. First fine under EPBC Act

In an action in the Federal Court, the Minister for Environment scored a significant victory for protection of wetland areas. An area of the RAMSAR Gwydir wetland was cleared for wheat production on the instruction of the owner without the relevant approvals. In response, the Department of Environment brought its first civil enforcement proceedings under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Justice Sackville found that the farmer and his company had deliberately contravened the EPBC Act by taking action without the relevant Commonwealth environmental approvals. The Court fined the farmer Mr. Greentrees \$150,000 and his company \$300,000. The Court injunctioned Mr. Greentrees and

his company from undertaking further agricultural activities on the land, and the running of livestock in the area until 2007. Mr. Greentrees was also ordered to plant 100 tree seedlings in the area within 30 days of the Court order.

The full text of the case can be found at [www.austlii.edu.au/au/cases/cth/federal\\_ct/2004/1317](http://www.austlii.edu.au/au/cases/cth/federal_ct/2004/1317).

### **EDO-Qld Vegetation Law Workshops and AGM a Success**

Over the last few months EDO-Qld have presented pilot vegetation laws workshops in Rockhampton (24 July 2004) and Brisbane (August 7 and 26 2004), discussing the effect of the recent landmark changes to the clearing laws in Queensland, which phase out broadscale clearing by 2006. Readers will recall EDO-Qld had significant input into the drafting of these amendments and assisted groups QCC, WWF, ACF and TWS in their campaign to increase protection for Qld vegetation. Feedback from the well-attended workshops has been extremely positive and has indicated it was invaluable for anyone interested in vegetation protection. EDO-Qld would like to thank contributors to the Vegetation law Seminar on 26 August at Parliament House – speakers Dr Carol Booth, Dr Barry Traill (also on 7<sup>th</sup> August) and Ms Rachel Barley, and volunteer Rebecca Tedder. We still await a response from the Department of Natural Resources to our August 2004 request for modest funding to run a much needed series of such workshops. If you would like to learn more about the new Qld vegetation clearing laws, contact EDO-Qld or EDO-NQ.

The EDO-Qld AGM was held on Tuesday 24<sup>th</sup> August at the offices of Blake Dawson Waldron Lawyers. Thanks to Blakes for allowing us use of their room, to guest speaker Susan Brown (soon to relocate to Switzerland) who entertained the audience with tales of the media's influence on environmental policy, and to our members who supported the evening. It was a fun event. The formal side of proceedings saw a new EDO-Qld committee member in Rupert Quinlan, the QCC rivers project officer. A warm welcome to Rupert from EDO Qld staff, who look forward to his input on the committee. Ongoing sincere thank you to all our very capable and far sighted re-elected EDO-Qld Committee members comprising, Chair Lesley King, Treasurer Rob Stevenson, Secretary Liz Baker and members John Llewellyn and Chris Greenway.

### **EDO-NQ AGM & Workshops a Success**

The EDO-NQ AGM was held on 9 November 2004. The Management Committee for 2005 was elected at that meeting. Rowan Silva will continue as President and Mandy Shircore will continue as Treasurer/Secretary. Nicky Hungerford (CAFNEC), Nigel Weston (JCU), Michael Neal and James McLellan (NQCC) will continue on the Management Committee. New Management Committee members include Joan Fitzsimons from Mackay Conservation Group, Bill Mitchell from Townsville Community Legal Centre and Su Groome, a Cairns architect. We look forward to working with them over the coming year. At the AGM a resolution was passed to increase the EDO-NQ membership fees which will be effective for those renewing their membership after December 2004.

This year's AGM was particularly interesting for members due to the presence of Chris McGrath, a Brisbane based barrister who has conducted a number of public interest cases for the EDOs around Australia. Chris gave members an informative talk at the AGM entitled "Whales, flying foxes and dams" which provoked some lively debate. We thank Chris very much for taking the time to attend the AGM and present such an interesting talk.

EDO-NQ also held a well attended evening Defamation workshop in mid November and held another seminar in late November on the changes to the *Vegetation Management Act 1999* as a result of the passage of the *Vegetation Management and Other Legislation Amendment Act 2004*. Both seminars were held at our spacious new office.

### **Welcome to EDO-NQ's new second solicitor Kirsty Ruddock! And Goodbye to Eva Iluk**

EDO-NQ's new solicitor, Kirsty Ruddock, commenced work in Cairns in late August 2004. Kirsty has been a great addition to the office and replaces Stephen Hall, who has returned to Tasmania to commence PhD studies. Kirsty worked as a lawyer in the Solomon Islands and Samoa prior to commencing with EDO-NQ. Before working overseas, Kirsty was employed as a senior lawyer with the Australian Government Solicitor. EDO staff and committee members extend a warm welcome to Kirsty!

EDO-Qld staff say a sad goodbye to Eva Iluk, our administrator, who has moved to a career in the public service. Good luck Eva!

9th Floor, 193 North Quay (corner Herschel St), Brisbane 4000. Ph: (07)32114466, Fax: (07)32114655, Email: [edoqld@edo.org.au](mailto:edoqld@edo.org.au)

**Environmental Defender's Office of Northern Queensland Inc.**

1<sup>st</sup> Floor, 96-98 Lake St CAIRNS 4870. Ph: (07) 4031 4766, Fax: (07) 4041 4535, Email: [edonq@edo.org.au](mailto:edonq@edo.org.au)