



Environmental Defender's Office ACT

Newsletter

Autumn 2008

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After a long break the EDO ACT newsletter is now back. The newsletter is designed to provide information on what's happening in environmental law in the ACT and throughout Australia.

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EDO News

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ACT News

Proposed new Power Station

A proposed new gas fired power station at Macarthur has been met with great community opposition. ACTEW AGL lodged earlier this year a development application for a proposal to build a gas fired power station which would service a proposed computer data centre and operate as an emergency supply. The development would involve the building of exhaust stacks up to 35 metres.

The preliminary assessment prepared for the proposed development includes studies which show that the proposed station would exceed current allowable noise levels.

Greens MLA Dr Deb Foskey moved a motion in the Legislative Assembly on 7 May to put the development on hold until certain matters have been addressed including a full environmental impact analysis of the proposal and an independent report on its health impact.

The EDO ACT is concerned that major projects such as these do not adequately allow for community consultation and rigorous environmental analysis until the proposals are well underway and often millions of dollars have been expended. Once large amounts of time and money have been invested in a project, it is often very difficult to abandon or change a project if significant environmental impacts are later found. Indeed the large amounts of money already invested in projects are sometimes used as a justification for continuing with a project even if later studies highlight environmental concerns.

A copy of the preliminary assessment of the proposal is available at the ACT Planning and Land Authority's (ACTPLA) website at <http://www.actpla.act.gov.au/>

The time for commenting on the preliminary assessment has been extended until 27 May. EDO encourages all concerned citizens to make a submission to help the community voice to be heard.

A group of concerned residents have formed a group (Canberrans for Power Station Relocation), to get the proposed power station relocated as far away from residential areas as practically possible. More information is available at their website <http://canberrapowerstation.info/modules/AMS/>

Canberra to become a 'solar city'

Recent initiatives flagged by the ACT Government to encourage the take up of solar energy see Canberra being branded the 'solar city'. With a consistently high number of averaged sunshine hours per day, Canberra is well placed to become a 'solar city'.

In March this year the ACT Government and ActewAGL announced a feasibility study into building a large scale solar plant in the ACT in a bid to

tackle climate change. The EDO welcomes this announcement, whilst acknowledging that this needs to be part of a program of measures which are aimed at reducing energy usage.

The EDO also welcomes the recent moves towards the introduction of Feed-in-Tariff laws in the ACT. Feed-in-tariffs are essentially an incentive structure to boost the adoption of renewable energy where electricity companies are required to buy renewable electricity (from people who generate electricity from renewable sources such as solar photovoltaics) at a premium rate.

The EDO strongly supports the introduction of feed-in-tariff laws as the most effective way of encouraging the production of electricity from renewable sources. However, as noted above, such measures must be accompanied by measures to reduce consumption.

The ACT Government released a Feed-in-Tariff Discussion Paper in December 2007. An exposure draft of Labor MLA Mick Gentleman's Private Member's Bill (the Electricity Feed-in (Solar Premium) Bill 2007) to introduce feed-in laws was also released for public comment. A revised Bill (the Electricity Feed-in (Renewable Energy Premium) Bill 2008, taking into account some of the consultation comments, was introduced into the Legislative Assembly in April 2008.

The EDO is pleased that the revised Bill has included changes recommended by the EDO to guarantee a premium rate for a 20 year period so as to provide the long term financial certainty required to encourage rapid uptake of renewable energy. We look forward to the passage of feed in tariff laws through the Parliament and hope that other States and Territories can look to Canberra as an example of model feed-in laws.

A copy of the EDO (ACT)'s submissions on the ACT Government's Feed-In-Tariff Discussion Paper and the EDO's submissions on the Exposure Draft of the Solar Premium Bill will be available at our website www.edo.org.au/act shortly or by contacting EDO ACT.

The ACT Government's Feed-In-Tariff discussion paper is available at <http://www.cmd.act.gov.au/policystrategic/fit>

The Renewable Energy Premium Bill, as introduced into the Assembly, is available at http://www.legislation.act.gov.au/b/db_32174/default.asp. The Bill is yet to be debated.

New ACT Planning Scheme in force

The ACT's long awaited new planning scheme has now commenced with the remaining provisions of the *Planning and Development Act 2007* coming into effect on 31 March 2008. The key components of the new scheme are set out in the new Act, accompanying regulations and in the restructured Territory Plan.

Disappointingly, the new regulatory regime has not adopted the EDO's

recommended changes to broaden appeal rights to enable greater public scrutiny of government planning decisions. Appeal rights are instead restricted to those people who can demonstrate a 'material detriment' as a result of the decision.

A copy of the EDO (ACT)'s submission on the Exposure Draft of *the Planning and Development Bill 2006* is available at our website www.edo.org.au/act or by contacting EDO ACT.

The EDO ACT is planning to conduct community forums later in the year to explain the operation of the new scheme. These will coincide with the launch of the new edition of the ACT Environmental Law Handbook which the EDO Office is to publish later in the year. Look out for further details in the next newsletter.

Canberra to become Sydney's 2nd airport

Canberra International Airport is planning massive expansion. In its draft 2008 Master Plan the airport proposes to establish Canberra Airport as Sydney's second airport and as a 24 hour freight hub with a dramatic increase in the frequency of flights and with no night time curfew.

Apart from very significant noise pollution concerns, the EDO is particularly concerned about the lack of adequate assessment of the environmental impact of such a plan. The massive airport expansion highlights the urgent need for legislative reform to include an emissions trigger in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to ensure that appropriate environmental impact assessments are undertaken of proposals which will result in a substantial increase in greenhouse gas emissions.

The expansion plans also have the potential to significantly affect the habitat of the endangered species Eastern Earless Dragon and the Golden Sun Moth.

A copy of the EDO ACT's submission on the preliminary draft report will be available shortly at our website www.edo.org.au/act or by contacting EDO ACT.

Information regarding the proposal is also available from the Curfew4Canberra website <http://www.curfew4canberra.org.au/>. Curfew4Canberra is a group of concerned residents formed in response to the dramatic changes proposed in Canberra Airport's draft 2008 Master Plan.

Concerned residents have an opportunity to urge the Government to apply appropriate planning controls and environmental assessments to airports. The Federal Government has recently called for submissions on an issues paper to develop a National Aviation Policy Statement. Its stated aim is to provide greater planning and investment certainty for the industry as well as address wider community and environmental aspects.

Submissions are invited from interested parties and should be provided by Friday 27 June 2008. The EDO encourages community members to lodge a submission. Details on how to lodge a submission and the issues paper prepared as a basis for consultation is available at www.infrastructure.gov.au/nap/.

Molonglo Development

The ACT Planning and Land Authority (ACTPLA) issued a draft variation to the Territory Plan in September 2007 seeking to vary the Territory Plan to allow for future urban development at Molonglo and North Weston. This proposed development has the potential to significantly impact on important ecological communities and endangered species such as the brown tree creeper, raptors, yellow-box-red-gum woodland and natural temperate grasslands.

It is important that stringent environmental rules apply to developers of major projects. Almost a quarter of Australia's greenhouse gas emissions are a result of energy demand in the building sector. This highlights the significant contribution of how we build has on climate change and the need for giving proper consideration to climate change impacts in assessing development proposals.

The EDO is concerned that any new development should fully incorporate effective solar and water sensitive planning. It is necessary to ensure that past mistakes in large developments such as Gungahlin, whose block sizes and house sizes severely restrict the effective use of solar energy, are not repeated.

A copy of the EDO ACT's submission on the draft variation will be available at our website www.edo.org.au/act shortly or by contacting EDO ACT.

ACTPLA has released a community consultation report and ACTPLA's responses to key issues raised in consultation. This is available at ACTPLA's website <http://www.actpla.act.gov.au/>

Bill to regulate Strategic Litigation against Public Participation

The EDO ACT welcomes the introduction of the *Protection of Public Participation Bill 2008* into the ACT legislative assembly for debate as a private members bill by ACT Greens MLA Dr Deb Foskey. The Bill aims to encourage public participation by protecting the right of people to speak out on matters of public interest.

In particular it is designed to discourage SLAPPs (strategic litigation against public participation). SLAPPs refer to legal action taken with the intention to discourage and suppress action taken by individuals or groups who wish to express their views on matters of public interest. Such actions have been used in the past to try to suppress community concerns about the

environmental impacts of particular projects.

EDO ACT has in the past supported anti-SLAPP legislation and is pleased to once again put its support behind this Bill. If this Bill is enacted it will help to protect the public's right to participate freely and unhindered on matters of public interest.

A copy of the Bill is available at

http://www.legislation.act.gov.au/b/db_32176/default.asp

News from Around Australia

The Australian Network of Environmental Defenders Offices (ANEDO), which is made up of nine EDO offices throughout Australia, including EDO (ACT), has recently made law reform submissions on:

- the use of Environmental offsets under the Commonwealth EPBC Act;
- abatement incentives prior to the commencement of the Australian Emissions Trading Scheme;
- misleading statements relating to carbon offset claims;
- recommendations for amendments to the EPBC Act; and
- the National Greenhouse and Energy Reporting System Regulations Policy Paper;
- the Garnaut Climate Change Review Low Emissions Energy Technology Issue Paper;
- the Garnaut Climate Change Review Emission Trading Scheme Discussion Paper;
- the Garnaut Climate Change Review Interim Report to the Commonwealth, State and Territory Governments.

All these submissions are available at www.edo.org.au/policy/policy.html.

Litigation News

EDO NSW successful in case to stop Japanese whale hunt

In January 2008 the Humane Society International, represented by EDO (NSW) & barristers Stephen Gageler SC and Dr Chris McGrath (who appeared free of charge), were successful in a long running case brought against a Japanese whaling company for hunting and killing whales in the Australian Whale Sanctuary, adjacent to Antarctica. The Federal Court found that the whaling company was in breach of Australian law by whaling in the Australian Whale Sanctuary and granted HSI an injunction to restrain the whaling company from killing further whales in the Australian Whale Sanctuary.

To date no enforcement action has been taken by the Australian Government.

Further details of the case, including a link to the judgment are available from the EDO NSW website

http://www.edo.org.au/edonsw/site/casework_key.php

Coal Mine Case highlights need for reform

EDO (NSW) has been acting for the Anvil Hill Project Watch Association Inc (the Association) challenging a decision of a delegate of the Federal Minister for the Environment and Water Resources that the Anvil Hill project (a proposed large scale open cut coal mine) is not a 'controlled' action under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The decision effectively means the project will not have to undergo any sort of environmental assessment because the Commonwealth does not believe it is likely to have a significant impact on a matter of national environmental significance.

The challenge has been dismissed by the Federal Court and also, on appeal, by the Full Federal Court. The outcome of this case highlights concerns about the extent to which the Commonwealth is required to consider greenhouse gas emissions arising from large mining or other industrial developments in Australia and the need for reform to the EPBC Act to ensure that these matters are properly considered in decisions approving such developments.

Further details of the case, including links to the judgment are available from the EDO NSW website

http://www.edo.org.au/edonsw/site/casework_key.php

EDO NSW wins climate change coastal development case

In late 2007 EDO NSW had a climate change victory in the NSW Land and Environment Court. EDO NSW assisted local resident Jill Walker in challenging a concept plan for an aged care facility development on a coastal plain where flooding was a risk. Amongst other matters it was argued that the NSW Minister for Planning had failed to apply the principles of ecologically sustainable development (ESD) in approving the proposal. The Judge in this case found that the Minister had failed to consider ESD by failing to consider the potential increased flood risk (where flooding was identified as a major constraint on development of the site) due to climate change. Finding that climate change was a deadly serious issue involving risk to the survival of the human race and other species, the Judge said the Minister should have considered climate change impacts in deciding whether to approve the concept plan. This is a welcome judicial recognition of climate change.

However the case is currently subject to an appeal to the NSW Supreme Court, Court of Appeal. There is no decision at this stage.

Further details of the case, including links to the judgment are available from the EDO NSW website

http://www.edo.org.au/edonsw/site/casework_key.php

Community Education and Events

The State of Environmental Assessment: A National Conference

Where: National Museum of Australia, Canberra

When: 23 May 2008

This conference is organised by the Australian Centre for Environmental Law at the ANU and examines the state of the law and practice of environmental assessment across the country and the need for reform at both a state and federal level. Speakers include Larissa Waters from EDO QLD Further details of the Conference are available from

<http://law.anu.edu.au/ancel/Events.asp>

Imagining the Real: Life on a Greenhouse Earth

Where: Manning Clark House and the ANU Fenner School

When: 11 and 12 June 2008

This conference will explore the origins and consequences for life and civilisation of the severe greenhouse predictions predicted for the next few centuries. Speakers include Dr Carmen Lawrence, Senator Christine Milne and Phillip Adams. More information can be found at:

<http://www.manningclark.org.au/events/conference2008/index.html>

Adapting to Climate Change – Law and Policy Conference

Where: National Museum of Australia, Canberra

When: 19 and 20 June 2008

The ANU Centre for Climate Law and Policy and the Griffith University Socio-Legal Research Centre is holding this conference to look at the legal and policy dimensions of adaptation. Speakers include Jeff Smith from EDO NSW. Further details of the Conference are available from

<http://law.anu.edu.au/>

Coastal Law and Climate Change

Where: Soldier's Club, Beach Rd, Bateman's Bay

When: 28 June 2008

EDO (NSW) is hosting a free workshop on Coastal Law and Climate Change. The workshop will cover various issues relating to coastal law and the potential avenues for future laws and policies to effectively address the impacts of climate change on coastal areas. More information can be found at: <http://www.edo.org.au/edonsw/site/workshops.php>.

New Staff for EDO ACT

Kirsten Miller has recently joined the EDO (ACT) office as the Principal Solicitor. Kirsten replaces Michael Lalor who sat in the hot seat for a short time at the EDO (ACT) office. Michael had replaced Dr James Prest who has taken up a position at the Australia Centre for Environmental Law at the Australian National University.

June Weise continues in the position as the Office's administrator.

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