



Environmental Defender's Office ACT

Newsletter

Autumn 2010

No 2 of 2010

EDO (ACT)

First floor

14 Childers Street

Canberra

GPO Box 574

Canberra City

ACT 2601

Phone: (02) 6243 3460

Fax: (02) 6243 3461

Email:

edoact@edo.org.au

Webpage:

www.edo.org.au

The EDO (ACT) newsletter is designed to provide information on what's happening in environmental law in the ACT and throughout Australia.

Contents

ACT News

p. 2

EDO helps improve environmental outcomes for redevelopment site adjacent to Mt Majura

Amendments to ACAT legislation limit environmental appeal rights

ACT Statement of Planning Intent

Greens' plan for improved funding of Community Legal Centres in the ACT

News from around Australia

p. 3

Energy disclosure bill tabled

Proposed amendments to RET scheme

Company Pays for Clearing Grassland

Current Inquiries and Opportunities to Comment

p. 4

ACT

Litigation news

p. 6

Community Education and Events

p. 7

Contact us

ACT News

EDO helps improve environmental outcomes for redevelopment site adjacent to Mt Majura

Following a variation to the Territory Plan, ACTPLA has approved the construction of 316 residential dwelling at the site of the former heritage village in North Watson. The site backs directly on Mt Majura Nature Reserve and a number of community groups expressed their concerns about environmental and traffic impacts of the development, including the loss of endangered woodlands.

EDO assisted its clients, the North Canberra Community Council, Friends of Mt Majura and the Conservation Council ACT Region to reach agreement with the developers of the site, Village Building Company, for the developers to contribute more than \$250,000 towards undertaking additional conservation and traffic measures at and around the site, including revegetation on the Mt Majura nature reserve, weed control, interpretative signage, cat containment measures and ongoing community engagement.

Amendments to ACAT legislation limits environmental appeals

Recent amendments to the *ACT Civil and Administrative Tribunal Act* make it more difficult for merits appeals to the tribunal on certain environmental and planning decisions.

The amendments restrict the rights for people to join an appeal to those who are eligible to initiate an appeal. This means that people who have an interest in a planning decision but did not put in a representation on the development application will not be able to be joined to an appeal.

The amendments also remove the right for certain internal ACAT appeals and amends the costs provisions. However these amendments only apply to appeals under the Planning and Development Act, Tree Protection Act and the Heritage Act. The EDO queries why these amendments only apply to environmental appeals and supports the Legislative Assembly Standing Committee on Justice and Community Safety's call for the government to respond and explain why different rules apply to appeals under certain environmental and planning legislation.

ACT Statement of Planning Intent

The ACT Minister for Planning, Andrew Barr, has released the 2010 Statement of Planning Intent which sets out the main principles that are to govern planning in the ACT. This statement sets out the broad future priorities of the government. The Statement outlines the following key principles:

- Supporting Canberra's economic growth
- Preparing for a sustainable future
- Planning for neighbourhoods
- Listening to the community
- Keeping politics out of planning.

Copies are available at:

Greens' plan for improved funding of Community Legal Centres in the ACT

The ACT Greens' have released a 5 point plan to improve access to legal services for those in the ACT who cannot afford a lawyer. The paper identifies that people are going without assistance when they need it most and that better funding of Community Legal Centres is part of the solution.

The paper outlines a series of steps to quantify the number of people missing out on assistance and identify how many extra lawyers are required to help close that gap. Once that gap is quantified, the ACT Government will need to increase funding and the Greens' plan suggests that a strategic way to improve services is to invest in CLCs.

The EDO(ACT) is well known for its expertise in planning and environmental law. However, with 2 part time staff it is hard to provide advice to all who need it. The Greens' plan calls on the ACT Government to improve EDO funding if the studies identify that missing out on EDO assistance is a consistent trend.

The Greens' Action Plan also recommends urgent actions to include funding in next months budget to (i) secure a permanent Indigenous Liaison Officer at the Women's Legal Centre; and (ii) establish a Mental Health Legal Centre.

A copy of the paper can be accessed in full from <http://act.greens.org.au/issues-2> or by contacting the office of Greens Attorney General spokesperson Shane Rattenbury on 6205 0005 or Rattenbury@parliament.act.gov.au.

News From Around Australia

Energy disclosure bill tabled

The Federal Government has introduced legislation, the *Building Energy Efficiency Disclosure Bill*, which would require commercial building owners to disclose buildings' energy efficiency rating before they sell or lease them.

The Bill proposes to initially affect only large commercial office blocks (2,000m or more), however, eventually mandatory energy efficiency disclosure would apply to all commercial buildings, e.g. hotels, retail buildings, schools and hospitals.

Owners would have to obtain 12-month building energy efficiency certificates, which would include buildings' overall energy efficiency star ratings, particular information about their lighting efficiency, and generic guidance on how the energy efficiency of the office may be improved.

The BEED Bill is designed to implement part of the Federal Government's national energy efficiency framework that was agreed both by COAG in July last year, and the Ministerial Council on Energy last November.

Proposed amendments to RET scheme

The Federal Government has announced that it will divide the renewable energy target (RET) scheme in two to separate large-scale technologies from small scale renewable such as solar PVs.

Legislation is proposed to be introduced in the coming months to create a new small-scale renewable energy scheme (SRES) and large-scale RET (LRET) It is believed that the LRET will deliver the vast majority of the government's target to generate 20% of Australia's electricity from renewable energy by 2020.

Company Pays for Clearing Grassland

An investment company who damaged nearly half a hectare of the nationally threatened natural temperate grassland of the Victorian Volcanic Plain at Altona North, Victoria in breach of national environmental law, will pay \$62,000 towards conservation research and protect up to 13 hectares of threatened species habitat.

Cromwell Property Securities agreed to the enforceable undertaking under national environment law with the federal environment department as an alternative to the matter going to court.

Details available at:

<http://www.environment.gov.au/about/media/dept-mr/dept-mr20100317.html>

Current Inquiries and Opportunities for Comment

ACT

Community forums to inform investigation into Canberra Nature Park, Molonglo River Corridor and Googong Foreshores

The Commissioner for Sustainability and the Environment is undertaking an investigation into the Canberra Nature Park (nature reserves); the Molonglo River Corridor (nature reserves) and Googong Foreshores. The general public are invited to attend these three forums, and need only RSVP to 6207 2626 or envcomm@act.gov.au. The terms of reference for this forum are also available at

http://www.envcomm.act.gov.au/investigations/nature_reserves_investigation.

When and Where:

Wednesday May 26, 5:30 -8:30pm at the Ainslie Football Club, 52 Wakefield Avenue, Ainslie.

East Lake Urban Renewal – Information Sessions

A public information display and short information sessions on the latest proposal for East Lake will be held at the Eastlake Football Club.

Consultants and ACTPLA staff will be seeking feedback on the preferred option for East Lake

and the outline of the strategic environmental assessment. The display follows community consultation in March on a number of options for East Lake.

Where: Eastlake Football Club, McDonald Room 3 Oxley St Griffith

When: Thursday June 3 2010

Display: 3pm to 8pm

Presentations: 4.30pm and 7pm (approximately 15 minutes each).

Draft Variation Number 302

Draft Variation 302 to the Territory Plan proposes changes to the community facility zone and the associated zone objectives, development table and code and rezoning of Belconnen section 87 blocks 12-15.

Comments close Tuesday 22 June 2010.

More information is available at

http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan/current_territory_plan_variations

Exposure Draft of Concessional Lease Amendment Bill

An exposure draft of the Planning and Development (Concessional Leases) Amendment Bill has been released for public comment. The Bill amends the *Planning and Development Act 2007* to make it easier to determine whether a lease is concessional.

Concessional leases are leases granted for less than market value, typically granted in return for a community benefit from the operation of the lease. Concessional leases cannot be sold without ACTPLA consent.

The Bill makes it easier to identify concessional leases by sorting all leases into categories:

- concessional
- not concessional
- possibly concessional

Comments are due by 11 June 2010.

Further information is available at:

http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/legislation/planning_and_development_concessional_leases_amendment_bill_2010

Litigation News

AAT stalls ship scuttle

The NSW EDO, on behalf of No Ship Action Group Inc successfully sought a stay on the Commonwealth Environment Minister's decision under s19 of the *Environmental Protection (Sea Dumping) Act* to grant a permit to allow the scuttling of the ex-HMAS Adelaide approximately 1.7km off Avoca Beach for the purpose of an artificial reef.

NSW EDO argued that the reef was likely to pollute the marine environment with PCBs and other contaminants and have a deleterious impact on the coastal environment. It also claimed the decision was inconsistent with international protocols on preventing marine pollution.

The decision was made to grant the permit on 22 March 2010. The NSW Department of Lands intended to scuttle the ship on 27 March 2010. At an urgent hearing on 24 March 2010, Downes J, President of the AAT granted a stay on the decision to scuttle the ship until the proceedings are determined.

In his judgment AAT President Justice Garry Downes commented on the fact the NSW Government had fixed a date for such a large public event before the permit was granted, stating that this "seems to me to be a course of action that decision-makers ought to think carefully about in the future". The matter is listed for hearing in July.

EDO NSW Climate Case Update: *Peter Gray & Naomi Hodgson v Macquarie Generation*

NSW EDO, has successfully defeated part of an application to strike out its clients' case against Macquarie Generation for disposing waste by way of the emission of carbon dioxide. The EDO is acting on behalf of members of Rising Tide, a grass roots non-profit community group. The EDO commenced civil enforcement proceedings against Macquarie Generation arguing that since Macquarie Generation is not expressly authorised to emit carbon dioxide into the atmosphere under its environment protection licence (a licence which authorises and regulates pollution), its emission of carbon dioxide is unlawful. More background information on the case can be found at:

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

In its strike out application, Macquarie Generation argued that even if its environment protection licence does not expressly authorise the emission of carbon dioxide, its authority to emit carbon dioxide should be implied on the basis that the production of carbon dioxide is a necessary part of generating electricity.

Justice Pain of the New South Wales Land and Environment Court found that the applicants' argument that Macquarie Generation is not authorised to emit any carbon dioxide at all is "unlikely to succeed" and dismissed that part of their case. The applicants are considering all their legal options in this regard.

Justice Pain did not dismiss the applicants' secondary argument. This was that even if Macquarie Generation has an implied authority to emit some amount of carbon dioxide in generating electricity, that authority is limited to an amount which has reasonable regard and care for people and the environment. Therefore, the applicants' case as to whether

Macquarie Generation is authorised to emit unlimited levels of carbon dioxide can now proceed to trial.

A copy of the full judgment is attached.

<http://www.lawlink.nsw.gov.au/lecjudgments/2010nswlec.nsf/61f584670edbfba2ca2570d40081f438/12885d4d65224df7ca2576e70022d082?OpenDocument>

Irrigators lose High Court water rights case

Earlier this year a group of 107 NSW farmers failed in their bid to have the High Court rule that a change to their water access entitlements was an acquisition of property under s51 of the Constitution requiring "just compensation".

The farmer's bore licences had been replaced with aquifer licences by the NSW government pursuant to a funding agreement between the Commonwealth and NSW. This reduced the amount of water the irrigators were allowed to use.

The farmer's argued that the replacement of the bore licences amounted to an acquisition of property on other than just terms compensation contrary to s51 of the Constitution.

The High Court held that the cancellation of bore licences and issues of aquifer access licences permitting the extraction of less water did not constitute an acquisition of property contrary to s51.

The farmers also argued that the funding agreement contravened s.100 of the Constitution, which prohibits the Commonwealth Government from limiting the right of a state to the reasonable use of rivers for conservation or irrigation.

The High Court held that the licences had not granted the irrigator's rights to use the water of a river within the meaning of s.100 so no breach had occurred. The Court held that whatever rights or liberties the farmers might have had under their bore licences only related to groundwater.

Victorian Forest logging court case starts

Last year Environment East Gippsland won an injunction on logging in a block of old-growth forest north of Orbost. They argued that the logging breaches provisions of the Victorian Sustainable Forests Act and the Flora and Fauna Guarantee Act.

The case is now being heard by the Courts.

Community Education and Events

ANEDO Conference and 25th anniversary dinner

When: 28-29 May

Where: Sydney Mechanics' School of Arts in Sydney

The Australian Network of Environmental Defender's Offices (ANEDO) will be holding a national conference on 28-29 May 2010. Professor Ian Lowe will deliver the keynote address

on the first day of the conference.

In conjunction with this conference there is a conference dinner, the guest of honour being The Hon Chief Justice Robert French, Chief Justice of the High Court of Australia.

Details of the dinner and conference are at:

<http://www.edo.org.au/conference.php>

World Environment Day Fundraising Trivia Night

When: World Environment Day, 5th June, 2010, 7-10pm

Where: Majura Hall, 2 Rosevear Place, Dickson

Price: \$25pp or \$200 for a table of 8

The Conservation Council cordially invites you to their World Environment Day Trivia Fundraising Night. All proceeds from the evening will go towards to the Council's Molongo Biodiversity Fund to raise money to hire a dedicated Biodiversity Campaigner.

The night will include 10 rounds of questions, a silent auction, wonderful raffle prizes as well as lots of fun games. Prizes will be awarded for the winning team. Light refreshments (coffee, tea, cakes) will be provided but we advise you to also bring your own drinks and nibbles.

Places are limited, so BOOK EARLY and get a **discount** off the ticket price. Alternatively you could purchase a table upfront (tables of 8) and organise your attendees at a later date.

Contact Susanna by phone: 6229 3208 or email: communications@consact.org.au to organise your booking

The Human Rights Arts and Film Festival (HRAFF)

The Human Rights Arts and Film Festival will take place in Canberra from 27 May to 29 May 2010 at the National Film and Sound Archives (NFSA).

HRAFF is dedicated to raising awareness, generating discussion and inspiring people to actively engage with human rights issues. HRAFF is run on a not-for-profit basis by a group of volunteers.

Thursday May 27 - Opening Night (Starting 6 pm, Film 7 pm) - tickets \$15

FILM: "William Kunstler: Disturbing the Universe".

The opening night festivities include a human rights themed art exhibition, Action Hubs presented by local and international NGOs, refreshments and live music.

Fr Frank Brennan AO SJ will present the opening address.

Friday May 28 (Film 7 pm) - tickets \$10

FILM: "A Powerful Noise", presented by CARE Australia. The film will be introduced by Hon Bob McMullan MP (Parliamentary Secretary for International Development Assistance) and Ms Julia Newton-Howes (CEO of CARE Australia).

Saturday May 29 (Film 7 pm) - tickets \$10

FILM: "Garbage Dreams". The film will be introduced by the ACT Young Australian of the Year 2010, Pierre Johannessen.

There will also be a human rights themed Poetry Slam and open mic taking place on Friday 28 May at the Front Gallery Cafe in Lyneham. This will be followed by a DJ set by local artist /

producer Boogie Smash.

To purchase tickets or for more information, please visit www.hraff.org.au or call the NFSA on 6248 2000.

My life in 2030 - Imagining the future with Green Technologies

When and Where: Thursday 3rd June, 7.30 - 9.30pm.

\$5 with free drink and homemade nibbles. Contact Laura on 0403 243 156

All Welcome. Tell your friends and networks and let's have a fun imaging session.

SEE-Change Winter warmer and Review Day

When and Where:

Friday 30th and Saturday 31st July.

Winter Warmer dinner Friday night 30th July,

Review Day all day Saturday 31st July at the Downer Community Centre. Contact Vanessa at office@see-change.org.au or on 6162 2320.

Behaviour Change training for Sustainability Advocates

What, When and Where:

1 day workshop run by Psychologist Tim Cotter which provides environmental sustainability advocates with insights, models and tools to trigger the psychological drivers of environmentally sustainable behaviour. Web: www.awake.com.au Cost: For-profits \$250, Not-for-profit/Government \$200, Individuals/Community Groups \$120.

Australian Association for Environmental Education Conference

When and Where: 27-30 September at the ANU.

Confirmed speakers include Carmen Lawrence, Tim Flannery, Clive Hamilton, Greg Bourne (CEO WWF). Information about the conference and call for papers can be found at: http://www.aeee.org.au/?page_id=673

Environmental Law Conference

When and Where: 20-23 October, Canberra

2010 is the International Year of Biodiversity and the National Environment Law Association will be holding its National Conference in Canberra.

This will be a unique opportunity to hear challenging presentations on the politics of preserving the world's biodiversity for future generations in the context of best practice environmental and sustainable development lawmaking.

The NELA National Conference is Australia's pre-eminent environmental law conference bringing together Judges, academics, legal practitioners, planners, scientists, government officials and policy analysts.

Further information is at the NELA website

<http://www.nela.org.au/>

Contact us

Environmental Defenders Office (ACT) Inc.
Level 1, 14 Childers Street, Canberra City ACT 2601
Ph: (02) 6243 3460
Fax: (02) 6243 3461
e: edoact@edo.org.au

If you no longer wish to receive our Newsletter by email, please email us at edoact@edo.org.au with “unsubscribe Newsletter” in the subject line. Your email address will be removed from our newsletter database and we will not send you these newsletters.



