



Environmental Defender's Office ACT

Newsletter

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EDO (ACT)

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

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ACT News

Cotter Dam expansion approved

The Federal Environment Minister, Peter Garrett, has given conditional approval to the expansion of the Cotter Dam.

The new dam, to be constructed slightly downstream of the existing dam, will increase the capacity of the Cotter Dam from 4 gigalitre to 78 gigalitres.

The approval is subject to a number of conditions which are designed to minimise the impact on the nationally listed threatened Murray cod and the Macquarie perch. ACTEW will fund and implement a fish management plan to ensure any impacts on the Macquarie perch are acceptable. In addition ACTEW will install an artificial habitat for the Macquarie perch and road crossings upstream will be modified to allow access to additional spawning habitat for the Macquarie perch.

The approval is also subject to a condition to increase the minimum downstream flow requirements for the Cotter River. This is designed to support the health of the downstream environment and ensure the protection of the Murray cod that live below the dam.

The cost of the project has blown out significantly from the initial \$150 million estimation to \$363 million. Documents recently provided by the ACT government to the Legislative Assembly show that an independent audit of cost estimates for the project found that a lack of transparency, inadequate contingencies and poor communication contributed to this cost blow out.

ACTEW is currently preparing its final environmental impact statement for the proposed pipeline to transfer water from the Murrumbidgee River to Googong Dam.

The approval and conditions can be found at http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=4524

Watson Heritage Village Redevelopment – exempt from EIS

Following the rezoning of the Australian Heritage Village at Watson a development application has now been lodged to redevelop the site and erect 316 new dwellings. The proposal has been exempt from the requirement to prepare an environmental impact statement on the basis that a pre existing study has already sufficiently addressed the environmental impacts of the project (under s211 of the Planning and Development Act).

Community concerns have previously been raised regarding the impact on endangered yellow box red gum grassy woodland but the development was deemed by the Commonwealth Department of the Environment to be unlikely to have a significant impact on the endangered community so it did not require assessment under the Commonwealth legislation.

The EDO continues to provide advice to community members in relation to the project.

ACT Legislative Assembly recommends Greenhouse Gas reduction targets

On 15 September the ACT Legislative Assembly Committee tabled its interim report on ACT greenhouse gas reduction targets. The Committee recommends that legislation be introduced that sets a target for the peaking of ACT per capita carbon emissions by 2013, a 5% reduction in overall emissions by 2015, a 40% reduction in emissions by 2020 and a recommendation that the ACT government consider the feasibility of an 80% reduction by 2050 (using 1990 baseline levels).

The EDO is pleased that the Committee has recommended strong targets, largely in line with EDO recommendations which recommended a baseline year of 1990 and a long term reduction target of 80-90% by 2050.

The EDO is also pleased that the report recommends that the ACT government make further representations to the Commonwealth to recognise voluntary contributions in the carbon pollution reduction scheme.

The full report can be downloaded from

<http://www.parliament.act.gov.au/downloads/reports/CCEW02%20Green%20Gas.pdf>

A copy of the EDO's submission to the inquiry is available at:

<http://www.parliament.act.gov.au/downloads/submissions/17%20EDO%20ACT%20Inc.pdf>

ACTPLA quick guide to territory plan

The ACT Planning and Land Authority has published a guide to understanding the Territory Plan. The Territory Plan is made under the ACT's planning legislation and guides planning and development in the ACT. It sets out zonings for particular land and guides what developments can be undertaken on land and any conditions that must be complied with.

A copy of the guide is available at the ACTPLA website at:

http://www.actpla.act.gov.au/_data/assets/pdf_file/0006/15567/Quick_guide_to_the_Territory_Plan.pdf

News From Around Australia

Report released on climate change impacts on coastal communities

The Federal Standing Committee on Climate Change, Water, Environment and the Arts has recently presented its report on the inquiry into climate change and environmental impacts on coastal communities.

The Committee has made over 40 recommendations to manage climate change and includes the possibility of banning occupation or development of land in coastal areas threatened by rising sea levels.

A copy of the report is available at

<http://www.aph.gov.au/house/committee/ccwea/coastalzone/report.htm>

A copy of ANEDO's submission to this inquiry is at

http://www.edo.org.au/policy/climatechange_coastal080610.pdf

Bill introduced to extend Tasmanian pulp mill permit deadline

The Tasmanian Government has recently introduced new legislation, the Pulp Mill Clarification Bill, to extend the deadline for permits relating to Gunns' northern Tasmanian pulp mill.

The legislation provides that Gunns will have until the end of August 2011 to "substantially commence" work on the project.

Federal Government to introduce National Planning Criteria

The Prime Minister Kevin Rudd has recently announced an intention to introduce national criteria, developed in partnership with States and Territories, for the future strategic planning of Australia's major cities.

The Prime Minister said the plan would regulate land releases for housing, encourage good design, ensure adequate transport infrastructure and take into account the expected impact of climate change. The aim is to make cities productive, liveable and sustainable.

The Prime Minister announced that the Commonwealth will consider linking all future infrastructure funding to compliance with these criteria.

Australia is world's largest per capita emitter of green house gases

A recent Climate Change Risks Report published by a UK risk assessment company, Maplecroft, has put Australia as the country with the highest per capita emissions of CO₂. Because of heavy reliance on coal, the average output in Australia is 20.58 tonnes of CO₂ per person per year, compared to 19.78 tonnes in the USA and 4.5 tonnes in China (however China's population relegates it to the position of highest greenhouse gas emissions overall).

Commentators have pointed out that if global emission reduction targets were to be framed on a per capita basis, Australia's emissions would require dramatic cuts to meet even relatively modest targets.

Environmental rights not recommended in the national human rights consultation committee report

The National Human Rights Consultation Committee handed its report to the Attorney General, Hon Robert McClelland on 30 September. The report is a result of 66 community roundtables which solicited over 35,000 submissions. The vast majority support greater human rights protection in Australia, primarily through the enactment of human rights

legislation. The committee has made a range of recommendations on ways that the Government should improve human rights protection in Australia, one of its strongest contentions being the improvement of human rights education and establishing a Human Rights Act with full protection of civil and political rights (and partial protection of economic, social and cultural rights).

Unfortunately the committee has not recommended the inclusion of environmental rights in Australian human rights legislation. This is despite 95% of people that the committee surveyed stating that they thought the right to a clean and healthy environment was important or very important, and environmental rights being raised at the majority of consultation sessions around Australia. In addition 245 submissions (including a submission by the Australian Network of Environmental Defender's Offices) specifically recommended the protection of environmental rights.

A copy of the report can be found at:

<http://www.humanrightsconsultation.gov.au/www/nhrcc/submissions.nsf/category?OpenView>

You can also view ANEDO's submission, which was quoted by the Committee, on the ANEDO website at

<http://www.edo.org.au/policy/090615humanrights.pdf>

The Federal Government will now consider the committee's report and will make a response.

Resort Developments at QLD's False Cape and Great Keppel Island stopped

The Federal Environment Minister, Peter Garrett, has recently suspended the Reef Cove Resort Pty Ltd's development approval to proceed with a development at False Cape in far north QLD for another 12 months. This is the second time the federal minister has used his powers under the EPBC Act to halt the development, the first instance being in September 2008. The minister originally froze construction last year after he ordered an environmental audit because of concerns about sediment run-off from the steep, rocky side in to the Great Barrier Reef World Heritage Area. This has been the first instance the minister has used the power under the Act to suspend development approval. Garret has commented that the reasons behind the freeze is the company's failure to fix the erosion and sediment problem and the fact the site was in disrepair and unmanaged due to the developers financial difficulties. Garret has stated that the suspension will still apply if the company sells the site.

In a later decision, the Minister has also refused plans for a huge tourist resort including 300-room hotel and day spa, 1,700 resort villas, 300 apartments, a 560 berth marina, yacht club, ferry terminal, retail village, golf course and sporting oval on the world heritage-listed Great Keppel Island on Qld's Great Barrier Reef. In refusing the plans the Minister stated that 'the impacts on inshore coral communities, coastal wetlands, marine species, island flora and geological formations of a development of this huge scale would be simply too great - these are the very values that earned the area's world heritage status.' It was unlikely the

environmental impact of the plans could be reduced or managed, he said.

Terrestrial Biodiversity Assessment 2008 released

The Australian Terrestrial Biodiversity Assessment 2008 has been officially released.

The Assessment summarises the current status and trend of terrestrial biodiversity in Australia and identifies indicators for the ongoing monitoring, reporting and evaluation of the status and trends of Australia's terrestrial biodiversity at a national level.

The Assessment finds that biodiversity loss continues at the national scale, and threats to biodiversity are ongoing and compounded by climate change. The Assessment reveals that despite an extensive portfolio of policies and programs across jurisdictions to manage and conserve biodiversity, the following issues have meant that the level of threat to biodiversity has not abated overall:

- the lack of effective and systematic monitoring systems for evaluation
- limited resources invested in institutional responses to threats to biodiversity, and
- the relatively small scale of initiatives, compared with the scale and nature of the threats.

The report is available on the [DEWHA website](#).

Greens launch 'Safe Climate' Bills

The Australian Greens Party has launched a package of 12 "Safe Climate" bills centering around the pillars of renewable energy, energy efficiency, clean transport and forest protection. The bills are in various stages, some of which have been introduced to the senate, while others are still in draft form. The proposed Safe Climate (Emissions Trading Scheme) Bill includes a 40% cut to Australia's greenhouse gas emissions on 1990 levels and an ultimate goal of 350 carbon parts per million. In addition the Greens Bills propose a 100% renewable energy target and national gross feed in tariff. Also an ETS with no price cap, full permit auctioning and no five year warnings or emissions caps for businesses. The clearing of native forests would also be ended under a 'green carbon' sequestration plan.

Copies of the package are available at:

<http://greensmps.org.au/the-safe-climate-bills>

Gorgon gas project

Three of the seven sisters of international oil have recently signed off with the Western Australian and Federal government on the \$50 billion Gorgon gas project. Notwithstanding environmental concerns regarding the site of the gas project on Barrow island, a nature reserve, home to vulnerable species such as the flat back turtle and questions raised over the implications of geosequestration on such a large scale, Exxon-Mobil, Shell and Chevron have managed to secure all the necessary government approvals and contracts for the

greater gorgon gas fields, and the necessary LNG plant to be located on Barrow island.

Commentators have noted that the sheer size of the 40 trillion cubic feet project will propel Australia into the 'first tier of energy exporters'.

Current Inquiries and Opportunities for Comment

ACT

National Capital Authority Forum

The National Capital Authority will hold a public forum to begin an open dialogue about planning in Canberra, and ensuring Canberra's 'place' as the national capital. The forum will provide a framework for discussion between the NCA, the community and stakeholders on:

- the NCA and its role;
- recent projects and work of the NCA; and
- goals and plans for Canberra as the National Capital.

Where: Parliament House

When: 26 November. 6pm until 9-10pm (depending on interest).

To register visit the NCA website at:

http://www.nationalcapital.gov.au/index.php?option=com_chronocontact&Itemid=420

Commonwealth

Indigenous heritage protection laws

A discussion paper for public comment on Australian laws to protect Indigenous heritage has been released. Submissions are invited to contribute ideas on making the Commonwealth's *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act) more effective as a way to protect traditional areas and objects significant to Indigenous Australians. The Australian Government is proposing to reform this Act to improve Indigenous heritage protection laws nationally.

Submissions due by 6 November 2009.

The Discussion Paper can be viewed at:

<http://www.environment.gov.au/heritage/laws/indigenous/lawreform/index.html>

Hazardous waste policy open for comment

The National Environment Protection Council (NEPC) is seeking comment on a review of cross-border transport of hazardous waste arrangements.

The Council has issued a discussion paper on the 1998 national environment protection measure covering movement of controlled waste

Submissions due by **6 November**

The discussion paper is available at:

http://www.ephc.gov.au/sites/default/files/MCW_DiscPpr_Review_of_Movement_of_Controlled_Waste_NEPM_Final_20090930.pdf

A Strategic Framework for Access to Justice in the Federal Civil Justice System

The Attorney-General, the Hon Robert McClelland MP, released the report of the Access to Justice Taskforce, 'A Strategic Framework for Access to Justice in the Federal Civil Justice System'. The report focuses on how to improve access to justice in Australia and makes recommendations. The report provides an opportunity for the public to assist the Government to develop initiatives which appropriately address and improve access to justice for all Australians.

The Discussion Paper is available at:

<http://www.ag.gov.au/a2j>

Submissions due by **13 November**

Litigation News

ACT Tribunal decisions highlight limits to merits review of planning developments

A number of recent decisions in the ACT Civil and Administrative Tribunal (ACAT) highlight the limits on the Tribunal's power to review certain planning decisions. Under the new ACT planning legislation (Planning and Development Act) decisions to approve merit track development applications (that is generally development proposals of medium impact) can only be reviewed by ACAT to the extent that the proposal does not comply with a rule as set out in the Territory Plan (where one applies) or to the extent that no rule applies (s.121).

This has been the subject of comment by the Tribunal in the recent decisions of *Thomson v ACTPLA* and *Mason and ACTPLA and Ors* (available at <http://www.acat.act.gov.au/decisions.php?PHPSESSID=8e6f7a6e1e43239255b13e23a0377970>)

This greatly restricts the power of the Tribunal to review decisions as they are not to take into consideration other matters, such as the zone objectives, the suitability of the land to the development or representations made by the public or bodies such as the Conservator for Flora and Fauna, in reviewing ACTPLA's decision.

The EDO is seeking to have the legislation amended to provide for more appropriate review rights.

Wildcare appeals tribunal decision to refuse licence to export joeys

Last year Wildcare Queanbeyan applied for a licence under the ACT Nature Conservation Act, to export about 35 joeys, orphaned by road accidents, to NSW.

The application was rejected by the ACT Conservator of Flora and Fauna and Wildcare sought review of this decision to the ACT Civil and Administrative Tribunal (ACAT).

ACAT recently rejected Wildcare's appeal and affirmed the Conservator's decision to refuse the licence to export the joeys.

Wildcare Queanbeyan is now appealing against the decision.

The decision of the Tribunal is available at:

<http://www.acat.act.gov.au/decisions.php?action=decision&id=40>

NSW EDO successful in obtaining protective costs order

In an important precedent for environmental litigation, the NSW EDO were successful in obtaining a 'protective costs order' (PCO) in *Blue Mountains Conservation Society v Delta Electricity* (which is a civil enforcement case against Delta for causing water pollution). The PCO caps the costs payable on a party/party basis in proceedings at \$20,000. The order was obtained early in the proceedings, prior to the Defendant incurring many costs, as the client could not afford to continue with the proceedings unless its liability was limited.

Under the Uniform Civil Procedure Rules the court has the discretion to limit the costs payable on a party/party basis at any stage in the proceedings. Justice Pain of the Land and Environment Court made the order on the basis that the case was brought in the public interest, was likely to raise novel questions of law and that the applicant could not continue unless an order capping costs was made. A PCO has never been made in NSW before on the basis that the proceedings were brought in the public interest, although the public interest has been taken into account on 2 occasions when PCOs were made in the Federal Court.

Case can be accessed at

<http://www.lawlink.nsw.gov.au/lecjudgments/2009nswlec.nsf/61f584670edbfba2ca2570d40081f438/51400baff2c95dd2ca25762700217ec0?OpenDocument>

Second Matter of NSW Planning Minister Bias

NSW EDO has, on behalf of the Sweetwater Action Group successfully opposed a decision by the current NSW Planning Minister to approve a concept plan and rezoning amendment for a \$1.8bn development.

The Planning Minister and developer conceded that the decision had been unlawful, so the matter did not proceed to court. The matter built on the decision of the NSW Land and

Environment Court in September, brought by the EDO that 'land swap' deals agreed to by the previous Planning Minister were unlawful on the basis of bias.

Details of these cases are available from the EDO NSW website at.
http://www.edo.org.au/edonsw/site/casework_key.php#riversos

EDO challenges Vic planning minister's 'extraordinary' decision

The Victorian EDO is challenging a decision by Victoria's planning minister, Justice Madden, to approve the construction of a boat ramp, a beach access road, a 130 meter breakwater and ongoing sand dredging at Bastion point in the State's east. Madden defied an independent assessment from a panel he himself appointed, to assess the impacts of the proposed development. The panel found that the projects proponents hadn't demonstrated an overall social or economic benefit and the environmental impacts were unacceptable. The challenge under Victoria's Environmental Effects Act (EEA) is that Madden misunderstood his task in that he didn't actually make an assessment of the environmental effects. The EDO is arguing that Madden breached procedural fairness by not allowing the EDO's client to be heard by the minister, once he had decided to go against the report. This is the first major challenge under the EEA. The development also had to be approved by Vic environment minister Gavin Jennings under the Coastal Management Act. Jennings has been joined to the case.

Brown Mountain Injunction

An injunction has been granted to temporarily halt logging in certain coupes of old growth forest at Brown Mountain in East Gippsland. Environment East Gippsland is suing VicForests (the statutory corporation which conducts most old-growth logging in Victoria) for breach of its environmental obligations under various forestry related instruments. The case is concerned about whether the logging would pose a threat to endangered species, particularly the long-footed potoroo.

In his judgment Justice Jack Forrest stated that "To put it bluntly, once the logging is carried out and the native habitat destroyed, then it cannot be reinstated or repaired in anything but the very, very long term," he said. Justice Forest also compared images of the logged forest with the battlefields of the Somme.

The trial is expected in late 2009 / early 2010.

Community Education and Events

EDO ACT AGM

When: Tuesday 17 November, 6pm

Where: Jamieson House, 43 Constitution Ave, Reid

All members are welcome to attend. Please RSVP to edoact@edo.org.au

Sustainable skills workshop

When: Thursday 5 November 7:30- 9:30pm (come at 7pm for a drink and chat).

Where: Main Hall, St James Church, 40 Gillies Street Curtin.

What: Woden SEE Change invites you to a sustainable skills workshop..."Sustainable building for advance retrofitter/renovators" Be part our "show and tell" session and learn some practical home renovation skills. Bring your ideas, techniques, experiences and photos!

Cost: \$5 entry includes a glass of wine or soft drink and a delicious home-made snack.

Contact: seechange.woden@gmail.com or call Laura Stuart on 0403 243 156.

Conservation Council ACT Region "The Next 30 Years - Our Vision/Blueprint for an Ecologically Sustainable ACT"

When: 12 November, 5:30pm for 6pm start

Where: Havelock House

What: "The Next 30 Years - Our Vision/Blueprint for an Ecologically Sustainable ACT (combined with AGM and a workshop on CONSACT's Strategic Plan)

Contact: Conservation Council ACT Region

The Future of Molonglo

When: 17 December, 5:30pm for 6pm start

Where: Havelock House

What: The Future of Molonglo: Canberra's Newest Suburb

Contact: Conservation Council ACT Region

Corinbank slow food project

Part of the 2010 Corinbank festival will be a slow food kitchen which will provide education, information and delicious food to festival attendees and volunteers and promote the importance of local produce and organic farming methods. This project has a number of components including a health recipe book, slow food banquet, workshops and a slow food kitchen.

Slow food is being coordinated by Shannon Dillon and she's looking for volunteers to help with any or all of these things. If that sounds interesting to you contact her on Shannon.Dillon@csiro.au for more information

Other News

Calling all Photographers

The EDO is developing a portfolio of photos for use in various EDO publications (such as our quarterly newsletter, the EDO website and education material). The types of images which we are seeking are images of the local ACT environment (eg photos of the local flora and fauna as well as city scapes, images associated with renewable energy eg solar panels, tanks etc) which we could use to illustrate environmental issues.

We require digital photos to enable us to reproduce the images online.

Please contact the EDO office if you have images which the EDO would be free to use.

Appeal for one-sided used Paper – we have run out

We at the EDO use paper printed on one side for most of our printing needs. If you know anyone or you are able to supply us with any non-confidential one sided paper we could use to accommodate our printing needs we would love to hear from you on:

edoact@edo.org.au or 6247 9420.

FREE copies of the new edition of the *Rural Landholder's Guide to Environmental Law in NSW*

The new edition of the *Rural Landholder's Guide to Environmental Law in NSW*, a publication last produced by the NSW EDO in 2006, is now available for free, including postage and handling. The guide is a valuable tool in understanding the law in NSW regarding land management and explains legislation dealing with issues such as vegetation management, protected species, fire management, water management, construction and development, pollution, agricultural chemicals, crops and stock, mining and quarrying, heritage protection, conservation on private land and trading and offsetting agreements.

To obtain your FREE copy of the guide please email education@edo.org.au or call **(02) 9262 6989**. Boxes of 160 are also available on request for groups or organisations.

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