



Environmental Defender's Office ACT

Newsletter

Winter 2010

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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

Planning Amendment Bill defeated

The EDO is disappointed that legislation introduced by Greens MLA Caroline le Couteur to amend the ACT's planning legislation in accordance with recommendations made by the EDO did not pass.

The Bill proposed to make amendments to ensure that if ACTPLA fails to correctly notify development applications, and this affects a person's ability make a submission then any subsequent approval of the development application could be invalidated.

The Bill also proposed amendments to expand standing to allow individual or community groups to lodge a merits review application of a development approval where they made a submission or where they have an interest. Current standing provisions limit people's rights to appeal decisions on development applications.

ACT Infrastructure Plan

The ACT government recently released its first Infrastructure Plan. The purpose of the plan is provide the community with information that details the priorities of the government and to provide a link between the annual budget and the government's long term vision for the ACT.

Some projects that were listed as infrastructure priorities included more schools in Eastlake and Molonglo, a new Supreme Court, redevelopment of some high-rise public housing, dedicated bus lanes, and new CIT campuses.

The Plan also explains the infrastructure priorities over the next ten years for a number of sectors, including transport, housing and community services, municipal services, land development and planning, water and energy.

Future revisions of the Plan will be informed by six-monthly industry and community roundtables.

The Infrastructure Plan is available online at www.cmd.act.gov.au.

The Snapshot is available at www.business.act.gov.au.

News From Around Australia

No additional legal assistance for EDOs

EDO was disappointed that the Commonwealth Government's recently announced additional funding for legal assistance programs to improve access to justice in the community included no additional funding for EDOs.

EDOs provide an essential service to the community in accessing justice and improving environmental outcomes for the public interest.

Whilst the EDO applauds the government for providing \$154 million additional funding over

4 years to other community legal services programs, legal aid and indigenous legal services, it is disappointed that the government yet again failed to prioritise access to justice for public interest environmental matters.

Renewable Energy Target (RET) split

The Federal Parliament recently passed legislation to split the RET scheme into two. The legislation's objective is to encourage more investment into commercial-scale wind, solar and geothermal generation through the large-scale renewable energy target scheme (LRET). The government needs to see much more power generation from large scale renewable energy sources across Australia to meet its 20% by 2020 RET target.

The new RET schemes begin on Jan 2011.

The senate review of the legislation package is available here:

http://www.aph.gov.au/Senate/committee/eca_ctte/renewable_energy_2010/report/c01.pdf

There are three pieces of legislation that relate to the RET:

The Renewable Energy (Electricity) Amendment Bill 2010 available at:

<http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/4A1A677E1672C4ECCA2577210018F30D?OpenDocument>

The Renewable Energy (Electricity) (Charge) Bill 2010 available at:

<http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/bills%5Cbytitle/098D39086229A275CA25772100195E8F?OpenDocument>

The Renewable Energy (Electricity) (Small Scale Technology Shortfall Charge) Bill 2010 available at:

<http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/bills/bytitle/BC30AFC1AF3E69AECA2577210019992E?OpenDocument>

Christmas Island mining expansion refused

The Commonwealth Environment Minister, Peter Garrett, recently refused a proposal to expand phosphate mining on Christmas Island which would have lead to the clearance of 256.3 hectares of fragile rainforest. The refusal was based on the unacceptable impacts on nationally listed threatened species, migratory species and Commonwealth land, including the threatened Abbott's booby and the Christmas Island frigate bird and other species such as the island's red crabs.

The company remains free to continue mining under their existing lease until 2019.

EDO NSW Marks Twenty-Five Years of Service to the Public and Protection of Australia's Environment

The Australian Network of Environmental Defender's Offices recently marked the twenty-fifth anniversary of the NSW EDO's birth as the first of Australia's Environmental Defenders Offices with a two-day conference, entitled 'Public Interest Law in Australia 25 Years On'. The conference provided a retrospective on the organisation's victories, and yet-to-be-

achieved victories, since its advent and provided a long-range view of environmental issues that will have to be tackled over the next 25 years.

Speakers at the conference included the Hon Robert McClelland (MP and Federal Attorney-General), Professor Ian Lowe (President of the Australian Conservation Foundation), the Hon Murray Wilcox (former judge of the Federal Court and current member of the EDO NSW's board), the Hon Duncan Kerr (MP), and Emeritus Professor Ben Boer (University of Sydney).

The highlight of the conference was a dinner where the guest speaker His Honour, Robert Shenton French, Chief Justice of the High Court of Australia, provided an interesting and entertaining account of his own experiences with public interest and environmental legal issues over the course of his career as a practitioner and jurist.

An outline of the Sydney conference program, including links to speakers' presentations and materials, is available at http://www.edo.org.au/conference_2010.php

Current Inquiries and Opportunities for Comment

ACT

Draft variations to the Territory Plan

Draft Variation 301

DV301 proposes the replacement of the residential subdivision development code with a new estate development code.

Submissions are due by **August 16**

Further information is available at:

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

Draft variation 303

DV 303 proposes revising the residential zones objectives and development tables, replacing the single dwelling housing development code and the multi unit housing development code, introducing a new residential zones development code and a new lease variation general code, and making changes to the definitions. It aims to incorporate leading practice solar access provisions into the residential housing development code. The variation also includes new rules for secondary residences, sometimes referred to as granny flats.

Submissions are due by **August 23**.

Further information is available at:

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

Eastern Broadacre area discussion paper

A discussion paper on the Eastern Broadacre area to the east of the city has been released. It

seeks public comment on the area as a future employment area. Drop in sessions have been arranged.

Comments close: **17 September 2010.**

Further information available at:

http://www.actpla.act.gov.au/topics/significant_projects/planning_studies/eastern_broadacre_planning_project

Hazardous Materials Draft Environment Protection Policy

The EPA has released a draft hazardous waste environment protection policy.

Submissions due: COB **17 September 2010**

More information available at:

http://www.environment.act.gov.au/environment/environment_protection_authority_legislation_and_policies

Litigation News

ACT Tribunal upholds refusal of multi unit housing development

The ACT Civil and Administrative Tribunal has recently upheld an ACTPLA decision to refuse to approve a multi unit housing development in Chifley. In upholding the refusal the Tribunal considered whether the scale and form of the development was consistent with the existing neighbourhood and streetscape and whether the land was suitable for a development of the density proposed and whether the development met certain Rules and Criteria in the Multi Unit Housing Development Code.

A copy of the decision is at:

<http://www.acat.act.gov.au/decisions.php?action=decision&id=100>

ACT Tribunal decision confirms limit to merit reviews

In a recent appeal decision the ACT Civil and Administrative Tribunal confirmed that if a development proposal in the merit track complies with a relevant rule the Tribunal cannot review the decision to approve the proposal on that point. However, the Tribunal confirmed that in reaching a decision ACAT can have regard to matters set out in s120 of the Planning legislation, which includes objects of the zone and entity representations.

The appeal, against an ACAT decision to vary an ACTPLA decision to approve a development application to permit seven 2-storey dwelling in Page by amending one of the conditions, was ultimately unsuccessful and the approval stood.

A copy of the decision is at

<http://www.acat.act.gov.au/decisions.php?action=decision&id=79>

Bastion Point Supreme Court decision

An appeal by the Friends of Mallacoota of the Environment Effects Statement (EES) assessment by Planning Minister Justin Madden in relation to the Bastion Point Boat Ramp in Victoria was recently dismissed. The EES opposed the construction of the boat ramp, as did a subsequent Panel Inquiry. The Minister did not accept the Panel's recommendation and took a different view to safety benefits and adverse effects.

The Friends of Mallacoota (Friends) argued three grounds to stop the local council putting in a boat ramp to give ocean access. The grounds argued were that the Minister had acted beyond their authority; that the safety of seafaring people should not be a relevant consideration in this matter and the Friends should have been allowed a right of reply when the Minister departed from the recommendations of the EES and the Panel. In dismissing the appeal, it was held that Minister had acted within their authority, that the Minister looking at 'social effects' was proper and that the relevant legislation did not give the right of reply to the public beyond ordinary legal remedies.

The Victorian EDO continues to advise the Friends in relation to protecting the Mallacoota coast.

See the full summary on [Environmental Law Online](#).

Private criminal action initiated against VicForest for alleged illegal logging

Whilst Supreme Court Justice Forrest is deliberating over an injunction to stop the logging of old growth forests on Brown Mountain in Victoria's East Gippsland area, another action alleging the illegal logging of pre-1900 ash eucalyptus trees near Toolangi in central Victoria, has been commenced. This is the first time a private criminal action has been launched in Victoria over alleged illegal logging.

This action has been initiated by the Flora and Fauna Research Collective (Collective). The first of two allegations being made is that VicForests is felling old growth trees near Toolangi and secondly, that in so doing VicForests is endangering the habitat of the Leadbeater's Possum. The Collective argue that this situation is dire as the habitat of Leadbeater's Possum was greatly affected by the Black Saturday Fires in Feb 2009. The Leadbeater's Possum is a protected species and is Victoria's faunal emblem.

VicForests assert that there has been no adverse affect to the habitat of the Leadbeater's Possum and that the allegations of felling old growth trees are baseless. They argue that the Collective has estimated the age of the eucalypts tree only by looking at the size of the tree trunks, which is not an accurate indicator of age. They contend that all logging in the Toolangi area is of trees that regrew after fires ravaged the area in 1939. If this is borne out after further investigation then the forest in question is not classified as 'old growth'.

This matter is scheduled to be heard before the Ringwood Magistrates Court in August.

Community Education and Events

After Copenhagen

Finding Direction in Climate Law and Policy

When: Monday, 9 August 2010

Where: Finkel Theatre, John Curtin School of Medical Research, ANU, Canberra

The ANU Centre for Climate Law and Policy, in conjunction with Baker & McKenzie and the ANU Climate Change Institute, are organising a one day conference. For more information and to register, please see: <http://law.anu.edu.au/cclp/copenhagen/web.htm>

Walk Against Warming

When: Sun 15 Aug, 12:30pm - 2:30pm

Where: New Parliament House

Walk Against Warming is on again outside New Parliament House! The walk is timed to coincide with the federal election. This election, help us put the pressure on our political leaders to: Make the: Big polluters pay; Replace our most polluting power stations with clean energy; Create new clean jobs and industries; Guarantee to cut pollution over the next term of government; Support poor and vulnerable countries to tackle the impacts of climate change.

Phone: 6229 3208

Email: communications@consact.org.au

Over the Back Fence Tour: Sustainable Home

Visit a sustainable home. Over the back fence tours gives participants a chance to see for themselves how others are making steps towards sustainability. Join SEE-Change members to visit a local home.

When: August 15th, 2010 2:00 to 4:00 PM

Where: To be advised.

Phone: 0403 243 156

Email: woden.seechange@gmail.com

Scarcity, Sustainability and Public Law

When: 3 and 4 September

Where: Australian National University

The Centre for Internal and Public Law, ANU presents its fifteenth annual public law weekend where it considers the scarcity of resources and sustainability and how these issues play out in public law.

Further information at:

<http://law.anu.edu.au/cipl/plw2010/web.htm>

Sustainable House Day

When: Sunday 12 September 2010

Where: to be advised

The ninth annual Sustainable House Day will showcase some of Australia's most environmentally sustainable homes to the public as millions of Australians continue to embrace renewable energy, recycling and other practices designed to lessen our impact on the environment.

Find out directly from home owners who've put sustainable living into practice, about

reducing waste around your home, saving water, natural home heating and cooling and more.

For more information please see <http://www.sustainablehouseday.com/>

Leading Change: Living for one planet, 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.aaee.org.au/?page_id=673

The Politics of Biodiversity Conference

When and Where: 20-23 October, University House, 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.

Further information is at the NELA website <http://www.nela.org.au/>

Other News

Position Vacant - Youth Ambassador for Development

The EDO NSW invites applications from young Australians (aged 18-30) interested in a placement as an Australian Youth Ambassador for Development (AYAD) for twelve months from March 2011.

EDO NSW is now conducting a preliminary recruitment process to select candidates for the following assignments:

- Environmental Legal Officer, Ministry of Natural Resources and Environment, Samoa
- Climate Change Policy Officer, Department of Environment, Fiji
- Biodiversity Officer, Department of Environment, Fiji

Details about these positions are available on the EDO NSW website:

www.edo.org.au/edonsw/site/jobs.php

To apply, please send a resume, statement against the selection criteria and contact details for two referees by email to international@edo.org.au by **2 August 2009**.

For more information, please contact Amelia Thorpe, EDO International Programs Director, on (02) 9262 6989 or email amelia.thorpe@edo.org.au

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