

One case of note is *Hammercall Pty Ltd v Gold Coast City Council* [2005] QCA 29, in which the Court of Appeal managed to tie itself into knots splitting 2:1 over the test of “relevance” of a development condition requiring dedication of a road in a staged subdivision. This follows the similar knot-tying exercise of the High Court last year, splitting 3:2 in *Western Australian Planning Commission v Temwood Holdings Pty Ltd* [2004] HCA 63 over a condition requiring the dedication of a foreshore reserve without payment of compensation. Despite the fact that the tests of relevance appear easy to state, the fact that our top courts split so finely in applying the tests can only leave mere mortals in the planning and environment legal profession scratching their heads in bewilderment.

## Change of Editor

This was the last instalment of the Queensland Update authored by Brisbane barrister Chris McGrath. Chris McGrath hands over to new Queensland NELR editor, Environmental Defenders Office (Qld) Inc. solicitor Larissa Waters.

## WESTERN AUSTRALIA

Editor: Merinda Logie

---

### Swan and Canning Rivers Management Bill 2004

A second version of the draft *Swan and Canning Rivers Management Bill 2004* has been released for public comment. The closing date for submissions is the 29th of July 2005. People interested can contact Deborah Rohan at the Swan River Trust on 08 9278 0917.

The draft Bill is part of a package of initiatives introduced by the Government in 2003 following a major outbreak of algae and widespread fish deaths in the River. The package included the creation of a Riverpark, the creation of new legislation and an additional \$15 million for the Swan River Trust over 4 years to manage the flow of nutrients into the river system.

The draft Bill and Explanatory notes were published in December 2004. The Bill gives greater powers, including increased regulatory and enforcement powers, to the Swan River Trust to coordinate river management. Amongst other things, the draft Bill provides that Swan River Trust regulations may prescribe environmental quality targets for components such as nutrients and other pollutants, and may establish benchmarks, criteria monitoring and reporting procedures. Part 6 of the draft Bill would enable the Trust to issue River Protection Notices where it considers that an action is required to protect, restore or maintain the ecological and community values and amenity of the Riverpark. This function is directed at sources of pollution and land owners. It would be an offence not to comply with a River Protection Notice.

### Contaminated Sites

The *Contaminated Sites Act 2003* is yet to come into force as the *Contaminated Sites Regulations* are still to be finalised and gazetted. The Department of Environment (DoE) has advised that the Act is likely to be proclaimed at the end of this year.

On 7 April 2005, the Government introduced the *Contaminated Sites Amendment Bill 2005* into the Legislative Assembly to rectify a discrepancy found in the Act, namely section 27, which specifies the hierarchy of liability for contamination relating to landowners. It was the Parliament's intention in passing the Act that where contamination from a contaminated site (the ‘source site’) migrated to affect other land or ground water (the ‘affected site’), the person responsible for remediating the contamination from the source site should also be responsible for remediating the contamination on the affected site. Section 27 in its current form does not effect this. The proposed Bill amends the wording of section 27, with the stated intention reducing the burden on innocent affected landowners.

### Planning and Development Bill

The *Planning and Development Bill 2005* was introduced into the Legislative Assembly, with a first and second reading, on the 7th of April 2005. The 2004 Bill had lapsed in January 2005 when Parliament

retired. The main purpose of the Bill is to consolidate the existing planning legislation. However, it also proposes various amendments to the current planning legislation to the current planning system.

The Bill, as reintroduced, is the same as the 2004 Bill, with the exception of three new amendments. First, the Bill includes amendments consequential on the coming into force of the State Administrative Tribunal and its enabling legislation. Secondly, the 2004 Bill provided that the Commission may approve a subdivision at variance to a local scheme if the local government had not made an objection for refusal. The 2005 Bill provides that the Commission may do so if the local Government has not made an objection or a recommendation for refusal. The third amendment is a minor correction to wording to ensure consistency with the *Town Planning and Development Act 1928*.

## Mining tenements and building licences

New advice received by the Department of Industry and Resources (DoIR) has indicated that mining tenements are not legally exempt from the requirement to obtain a building licence from a relevant local government authority. Previously it was considered that the approval provisions of the *Mining Act 1978 (WA)* precluded the operation of local laws or town planning schemes. Local government approval in the form of a building licence is only necessary for "buildings". Structures built for mining infrastructure, such as conveyer belts, do not need a building licence. A building licence is necessary to ensure compliance with the Australian Building Code, particularly the safety provisions. Failure by a local government to issue a building licence may be reviewed by the State Administrative Tribunal.

## A Sustainability Checklist Discussion Paper

The Western Australian Planning Commission has released for public comment, [A Sustainability Checklist](#) (March 2005). It is intended that the checklist be the initial step in the process of developing a sustainability scorecard. The purpose of the paper is to stimulate discussion about the concept of sustainability and economic, social and environmental criteria that would be suitable for use by all parties operating along the planning/development/building continuum".

Public submissions to the WAPC (on the specified form) are due by 30 September 2005.

## Annual Statements of Compliance

The Department of Environment is introducing requirements for all licensees to submit an Annual Statement of Compliance with the conditions of their licences issued under Part V of the *Environmental Protection Act 1986*. This is being required through the condition:

*"The licensee shall by 1 August in each year, unless another date is approved by the Director, provide to the Director a fully complete annual statement of compliance in the form in attachment \* to this licence signed by the appropriate officer of the licensee, for this licence and any other licence issued under Part V of the Environmental Protection Act 1986, for the 12 month period beginning 1 July and ending on 30 June in that year prior to the 1 August submission date."*

The Annual Statement of Compliance is a proforma template on which licensees are to indicate whether all conditions of their licences have been complied with between 1 July and 30 June each year, and if not, provide specific details of the breaches and steps taken to mitigate impacts and/or prevent recurrence. The Annual Statement of Compliance is to be signed by a person(s) with legal authority to sign it, as set out on the form, and submitted to the DoE by 1 August each year (8 weeks after the 30 June).

Other reporting requirements specified in licence conditions are not replaced by Annual Statements of Compliance, except where conditions have previously required this type of reporting. The DoE has emphasised that Licensee's are still expected to report all pollution incidents, to the DoE at the time of occurrence.

It is an offence under section 112 of the Act for a person to give information, that to his or her knowledge is false or misleading. The DoE expects that the person(s) with the legal authority to sign Annual Statements of Compliance will ensure that they have established reporting mechanisms and internal processes which

allow them to work with all managers and supervisors of activities related to the licence when completing the Annual Statement of Compliance. Any statements made in the Annual Statement of Compliance may be admissible in a prosecution for breach of licence condition, except where it is apparent that an honest error has been made.

Completed Annual Statements of Compliance are to be forwarded to the Licensing Policy Unit, Department of Environment Perth Office by 1 August each year. Annual Statements of Compliance will be publicly available.

The new requirement will be implemented in two stages. From May 2005, Conditions requiring Annual Statements of Compliance will initially be introduced to licences granted to putrescible landfill (Category 64) sites. From January 2006 the condition will be introduced to a broader range of reviewed licences.

For further information on the new requirements, contact Mark Cugley at the DoE.

## **State Emissions Trading Scheme**

The Minister for Environment announced recently that Western Australia would join a State and Territory led greenhouse gas emission trading scheme. In the absence of the Federal Government taking leadership on greenhouse, the State and Territory Governments have established a working group to develop a multi-jurisdictional emissions-trading scheme. By forming a national emissions-trading scheme, Australian industry could, in the future, be linked to international carbon markets, such as that recently established in the European Union.

Currently, in Western Australia the *Carbon Rights Act 2003* (WA) is established, enabling people to create carbon rights with the potential for trade. The Department of Environment is also setting up a WA greenhouse gas inventory to provide a profile of the State's emissions. This, coupled with the development of the State-Territory trading scheme and the development of consistent standards, may see Australian companies involved in emissions trading in the near future.

Features of the design and implementation of the State-Territory trading scheme, which are being investigated and discussed, include:

- a cap and trade approach
- national and sector-based— initially capturing the stationary energy sector
- monitoring reporting and trade of all six greenhouse gases recognised under the Kyoto Protocol
- initial permit allocation will be granted administratively and via auction
- penalties to encourage compliance and establish a price ceiling for the permit market
- mechanisms to address any adverse effect and structural adjustments – and to allow a transition for participants who have taken early action and new entrants.

---

## **TASMANIA**

*Editor: Tom Baxter*

### **Environmentally Relevant Acts**

Acts relevant to environmental law that have commenced since the last edition of NELR include the following. Pollution of Waters by Oil and Noxious Substances Amendment Act 2004 (Tas) (No. 47 of 2004)

***Wellington Park Amendment Act 2004 (Tas) (No. 48 of 2004)***

***Resource Management and Planning Appeal Tribunal Amendment Act 2004 (Tas) (No. 69 of 2004)***

The above Acts received Royal Assent and commenced on 17 December 2004.

***Sullivans Cove Waterfront Authority Act 2004 (No. 60 of 2004)***

This Act received Royal Assent on 17 December 2004 and commenced on 4 Apr 2005.