

Proponents of new or expanded facilities for the activities listed in the PEM that require assessment are advised to contact EPA Victoria for guidance prior to the design phase of their proposals to ensure that the design and specifications meet the requirements of the PEM. The new PEM can be viewed as Publication 1191 on EPA Victoria's website: www.epa.vic.gov.au

New Residential Zones for Victoria

The Minister for Planning has initiated a review of the residential zones in Victoria. The aim of the review is to make the residential zones more certain, more locally responsive and more user friendly. The development of new residential zones is a key action in the Victorian Government's five point priority action plan to implement the working group report, *Making local policy stronger*. This report recommended to the Minister for Planning that many local planning provisions would be more effective if implemented through more locally responsive zones and overlays. The working group noted in particular that the current residential zones do not effectively reflect the strategic objectives of most local housing strategies.

In February 2008, the Minister for Planning released a discussion paper entitled *New Residential Zones for Victoria*, which outlines a broad structure for the three proposed new residential zones: the Substantial Change Zone, the Incremental Change Zone and the Limited Change Zone. According to the Discussion Paper, these new zones are intended to more directly reflect the objectives of State and local planning policies for housing and to provide better tools for councils to manage the diverse and changing housing needs of their communities. It is intended that the new residential zones will serve as a primary mechanism in meeting the challenges raised by population growth and the trend towards fewer people living in each household. The zones will be particularly important in dealing with the challenges faced by the need to manage growth and service new populations in coastal settlements and regional centres. The Department of Planning and Community Development is seeking comments on the discussion paper and on the concepts for the proposed new zones. The responses to the discussion paper will inform the preparation of final detailed draft zones which are expected to be made available for further comment in mid 2008.

Strict Environmental Controls For Channel Deepening

On 14 December 2007 Minister for the Environment and Climate Change, Gavin Jennings, imposed three conditions on his approval of the Port of Melbourne Corporation's application to deepen the main shipping channels in Port Phillip Bay. Mr Jennings gave his approval under the *Coastal Management Act 1995* subject to the Port of Melbourne Corporation adhering to a comprehensive Environmental Management Plan (EMP), backed up by a \$100 million environmental bond and overseen by an Independent Environmental Monitor. The Port of Melbourne Corporation will also invest \$6.65 million in the environmental initiatives recommended by the Minister for Planning in his assessment. Mr Jennings stated.

"I am satisfied that concerns about any effects of deepening the main shipping channels in Port Phillip Bay can be addressed through the environmental strategies and plans attached to the project,"

(Minister's Press Release Friday, December 14, 2007)

QUEENSLAND

Larissa Waters

Caselaw update: First Third Party nature conservation case finally won after appeal and re-hearing

Readers may recall from the Spring 2005 Qld NELR Update the case of *Booth v Frippery Pty Ltd and Ors*, the first public enforcement action under state wildlife protection laws, to stop the electrocution of protected black flying-foxes by a lychee farmer in northern Queensland using electrified grids. Despite the farmer's admissions of thousands of illegal bat killings, at first instance in the Planning and Environment Court Judge Pack DCJ found that the defence in section 88(3) of the *Nature Conservation Act 1992* had been made out.

Dr Carol Booth sought leave to appeal from that decision on 25 grounds, and the state environment department, the Environmental Protection Agency, joined as a party to the appeal in support of Dr Booth. On 17 March 2006 the Court of Appeal upheld Dr Booth's appeal and ordered a re-trial of the case in the Planning and Environment Court.

In November 2007, judgement on the rehearing was given by Judge Robin DCJ of the Planning and Environment Court in Dr Booth's favour. The Court made enforcement orders under the *Nature Conservation Act* requiring the lychee farmer to dismantle his electric grids within two months. In his judgement, Judge Robin found that the farmer had illegally killed thousands of flying-foxes, and was likely to continue to kill or injure substantial numbers, despite his claims that the grids were non-lethal. Judge Robin also found that the farmer could not rely on the defence provided in the Act based on a lack of intention to harm the bats, as while the farmer's *motive* had been to protect his crops, his *intention* had been to kill or harm the bats.

An appeal to the Court of Appeal by the farmer in January 2008 was struck out for failure to file the requisite documents after several extensions had been granted.

Dr Booth is now calling on the government to totally end the killing of flying-foxes as a method of crop protection, by requiring that electrified grids be dismantled and that non-lethal methods be used instead of shooting. Netting is now being adopted by most farmers as it makes both commercial and environmental sense.

This series of cases has once again proved the great importance of third party (community) enforcement rights, which allow members of the community to stop illegal activity when the state lacks the capacity or the will to adequately police compliance with environmental legislation. Congratulations to Dr Booth, barrister Dr Chris McGrath and solicitors Environmental Defenders Office Qld for their success on this important nature conservation case.

For updates on other recent Planning and Environment Court and relevant Court of Appeal cases, see Deacons Lawyers' website www.deacons.com.au and follow links to updates by the Environment and Planning section, or Corrs Chambers Westgarth's website www.corrs.com.au and follow links to the Planning Environment and Local Government Practice Area.

Stoush over zoning of Ramsar listed Moreton Bay

In Summer 2008 Queensland's Environmental Protection Agency (EPA) released a draft zoning plan for internationally significant wetland Moreton Bay in South East Queensland. The draft Plan proposes to protect just 15% of Moreton Bay's 16 aquatic habitats in green zones (marine national parks). Fishers are outraged but conservation groups believe this is less than half of what Moreton Bay needs, calling for an average of 30 per cent of Moreton Bay's habitats to become green zones to secure the future of the resident turtles, dugongs, migratory shorebirds and other wildlife. With 8,000 public submissions received on the draft zoning plan, EPA has now announced that more than half of those submissions called for at least 30% green zones. For more information see www.epa.qld.gov.au/parks_and_forests/marine_parks/moreton_bay_marine_park_zoning_plan_review/

Coastal Management Plan under review

The Queensland State Coastal Management Plan, which guides State and local government decisions on land use, development and natural resource use in the coastal zone, is currently under review. The Environmental Defenders Office Qld, in conjunction with conservation groups, will be making a submission calling for better implementation of the Plan through tighter legal mechanisms, and for the Plan to incorporate measures to mitigate and adaptation to climate change. For more information see www.epa.qld.gov.au/environmental_management/coast_and_oceans/coastal_management/state_coastal_management_plan/state_coastal_management_plan_review/

Pollution Regulations bring re-drafted

Also under review are the Regulations to the *Environmental Protection Act*, which regulate point source pollution by establishing a licensing and fee structure for particular industries, including industrial, commercial, mining and intensive animal farming. The EPA has released a Regulatory Impact Statement (RIS) which is open for public comment until 28 March 2008. The RIS proposes a new approach based on potential to cause environmental harm, likely to result in fee increases for large polluting industries. For more information see www.epa.qld.gov.au/environmental_management/planning_and_guidelines/review_of_the_environmental_protection_regulation_1998/

Queensland Freedom of Information review

The Queensland government established the Freedom of Information Independent Review Panel in September 2007 to review Queensland's *Freedom of Information Act 1992* (Qld). A lengthy discussion paper was released in January 2008 for public consultation. The Environmental Defenders Offices of Queensland and Northern Queensland made a joint submission on the Review, calling for FOI to be more affordable and for improved access to information by stopping the abuse of exemptions to disclosure like the Cabinet exemption. A copy of that submission is available at www.edo.org.au/edoqld/edoqld/new/Submission%20-%20QLD%20FOI%20Act%20review%20Mar%202008.pdf, and the Discussion Paper is at www.foireview.qld.gov.au.

Other recent amendments to Queensland environmental laws

There have been some significant changes made to environmental law in Queensland in recent months, including:

- Landmark protection for Cape York through the *Cape York Peninsula Heritage Act*;
- Greater powers for Council to enforce water restrictions, and mandatory individual water meters for new units;
- Amendments to the *Water Act* about use of subartesian water and water efficiency management plans;
- Streamlining of the administrative processes for mining, petroleum and gas applications;
- *Water Resource Plans* for the Burdekin, Gulf, Mitchell and Burnett rivers and an amendment to the *Mary River Water Resource Plan*;
- Passage of the *Urban Land Development Authority Act*, concerning land supply for affordable housing;
- Laws to establish a governance structure for northern Indigenous Regional Councils;
- Mandatory guidelines for business owners on domestic, commercial and industrial waste;
- New rules about transfer of development conditions and registration certificates;
- New laws to protect natural or built icons that contribute to Queensland's character within newly merged local government shires;
- A new water management structure which divides responsibility between the State and local Councils;
- Announcement of the intention to introduce statutory regional plans throughout Queensland, based on the SEQ Regional Plan;
- A new *Crocodile Management Plan* for management of urban and problem crocodiles;
- Adoption of a new *State Rural Leasehold Strategy* which will allow longer leases if land condition or indigenous access conditions are improved;
- New laws requiring local Councils servicing more than 1,000 people to fluoridate their water supply;

- The commencement of laws against roadside littering in February 2008, with high penalties; and
- New nature conservation laws restricting the methods of driving away flying-foxes from roosting sites, and restricting the removal of protected plants.

SOUTH AUSTRALIA

Tom Ivey & Rebecca McAulay

Environment Protection (Site Contamination) Amendment Act 2007 (No 44 of 2007)

On 10 December 2007 several provisions of the Environment Protection (*Site Contamination*) Amendment Act 2007 No 44 of 2007 came into operation.

Of these provisions the following definitions under Section 4 are now operational:

- background concentrations
- chemical substance
- site
- site contamination
- site contamination auditor
- site contamination consultant
- environmental harm caused by chemical substances

The provisions at Part 10A Division 5 that pertain to reports by site contamination auditors and consultants also came into operation. The remaining provisions will become operational at a time fixed by subsequent proclamations.

Environment Procedures (Noise) Policy 2007

The *Environment Procedures (Noise) Policy 2007* (“the Policy”) is a policy document under the *Environmental Protection Act 1993* (“the Act”) that will become operational on 31 March 2008.

It is a comprehensive policy pertaining to various causes of noise, measurement procedures, and the consideration of noise in relation to Development Applications, and compliance and enforcement issues.

The objects of the Policy, set out in Part 2 Section 9, are to standardise noise goals for particular noise sources, set out procedures to determine compliance with goals, and to develop a standard approach regarding compliance and enforcement issues relating to noise.

Part 3 Section 11 sets out the requirements for instrumentation to be used for measuring noise levels under the Policy. It provides that measurements must be taken by a sound level meter that meets *Australian Standard AS 1259-1990 Acoustics—Sound Level Meters* and that has met rigorous testing requirements.

Part 3 Section 13 describes the general procedures that must be adopted when measuring a source noise level, an ambient noise level or a background noise level as defined by Part 1 Section 3. This is reinforced by more specific procedural guidelines in Sections 14, 15 and 16.

Part 4 Sections 18 and 19 deal with compliance with “noise goals” as defined in the Policy and the steps to be taken in a situation of non-compliance.

Part 5 Section 20 provides guidance for the Environment Protection Authority (“the Authority”) in terms of responding to a referral pursuant to the Development Act 1993 in relation to a Development Application. This section seeks to standardise the use of technical terminology as well as formulating guidelines as to what levels of noise are appropriate for particular noise sources.