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emit offensive odours and must not attract vermin or other vectors (such as flies, birds and rodents).

The July 2009 Guidelines now stipulate that wastes

that are generally not classified as putrescibles include soils, timber, garden trimmings, agricultural, forestry and crop materials, and natural fibrous organic and vegetative materials.

QUEENSLAND

Scott Sellwood

Sustainable Planning Bill passed

On 16 September the Sustainable Planning Bill 2009 was passed through Queensland Parliament. When it commences, on a date still to be fixed, it will replace the Integrated Planning Act 1997 as Queensland foremost planning legislation.

For a detailed overview of the Bill, please see http://www.deacons.com.au/UploadedContent/NewsPDFs/EP_article_0609.pdf

During the second reading of the Bill amendments were made. For the most part these amendments were minor; however two substantive changes were to:

- allow changes to be made to code assessable developments, not only impact assessable developments, as a consequence of an information request
- allow the Planning and Environment Court to make declarations about the construction of statutory guidelines for making and amending structure plans and priority infrastructure plans under the Act

Following the enactment of the new planning law the Department of Infrastructure has released the draft Queensland Planning Provisions – that will introduce common definitions and, layout for local government planning schemes. For more information go to www.dip.qld.gov.au/qpp

Amendments to proposed new Reef Protection Laws

On 4 June 2009 the Queensland Parliament introduced the Great Barrier Reef Protection Amendment Act Bill 2009. These laws propose amendments to Chapter 4 of the Environmental Protection Act 1994 to include a new class of environmentally relevant activity (ERA) for agricultural practices that impact on the Great Barrier Reef. See the Autumn 2009: 2 edition of NELR for an overview of the new laws.

Further amendments to the new regulatory framework were introduced in Parliament in early October, which introduce new provisions into the Chemical Usage (Agricultural and Veterinary) Control Act 1988 (Qld):

- making it an offence for uses of chemical products which are no longer registered by the Federal chemical regulator to not comply with the chemical use restrictions prescribed by the new Reef protection laws;
- introducing a new power to prescribe, through regulation, controls on chemicals for the purpose of achieving the objectives of the Reef protection laws

A further change is proposed to the threshold for cattle grazing properties that are regulated by the new laws. Previously, the threshold was 100 “standard cattle units”. With the recent amendments, cattle properties of more than 2000ha are regulated as agricultural ERA. The Minister will have the power to direct properties of more than 100 standard cattle units to implement an Environmental Risk Management Plan (ERMP), should it be necessary to achieve the objects of the new laws.

New regrowth laws for Queensland

Following the moratorium on clearing of key riparian and endangered regrowth vegetation, which commenced on 7 April 2009, the Queensland government has passed new laws that regulate the clearing of certain regrowth vegetation. The new laws, that took effect on 8 October, apply to:

- mature native vegetation that has not been cleared since 31 December 1989 (high value regrowth vegetation); or
- native woody vegetation within 50m of a watercourse within a the catchments of Mackay/Whitsunday, Burdekin and the Wet tropics, priority catchments that feed into the Great Barrier Reef (regrowth watercourse vegetation); or

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- identified as category C area under a property map of assessable vegetation (PMAV)

The regulated regrowth is identified on a new regional ecosystem map (an online resource that allows lot on plan searching) www.epa.qld.gov.au/nature_conservation/biodiversity/regional_ecosystems/introduction_and_status/regional_ecosystem_maps/index.html

The new regrowth laws augment Queensland's existing vegetation management framework. The existing framework prohibits broad-scale clearing of native vegetation unless the clearing is exempt or, is for a defined purposes and the clearing complies with the criteria under an applicable regional vegetation management code.

For regrowth vegetation covered by the new laws, the existing exemptions for clearing remain (for example, clearing necessary for essential or routine management, for urban purposes in an urban area, and for specified activities). However, the new laws go further, introducing new clearing exemptions, where the clearing is in a key resource area or, for a significant community project. A significant community project has an aesthetic, conservation, cultural or economic benefit to a local or regional community or, the State.

Where clearing of regulated regrowth is not exempt, clearing may nevertheless be permitted – but is subject to the minimum standards set out in the new regrowth code. Clearing that is consistent with the code is permitted. It is up to the person responsible to determine if their clearing is consistent with the code. Where clearing is consistent the Department of Environment and Resource Management (DERM) must be notified, but no permit is required (in this way compliance with the regrowth code is akin to a further category of exempt development).

The code is available www.nrw.qld.gov.au/vegetation/pdf/regrowth_guide_code.pdf

Revised SEQ Regional Plan comes into force

The revised South East Queensland Regional Plan 2009-2031 came into effect on 28 July 2009. Over 3000 public submissions on the draft regional plan were considered by the Queensland Department of Infrastructure and Planning.

Draft SEQ Climate Change Management Plan

In July, the Queensland government released the

Draft South East Queensland Climate Change Management Plan, which sets out the draft action items that are proposed to implement the climate change priorities (DRO1) in the SEQ Regional Plan 2009.

The draft plan is available online: www.dip.qld.gov.au/climatechange

The actions items address adaptation in response to climate hazards and, reducing greenhouse gas emissions through energy efficiencies, building code reforms, and public transport provisioning (Transit Oriented Developments). Public consultation on the draft management plan closed in early October.

Revised climate change strategy for Queensland

In August, Queensland government released its revised climate change strategy. ClimateQ – towards a greener Queensland is available online: www.climatechange.qld.gov.au/whats_being_done/queensland_climate_change_strategy.

New “dividing fences” and “nuisance” tree laws

Outdated neighbour laws will be repealed and replaced under a Queensland government plan to quell disputes over dividing fences and nuisance trees. The new laws are currently being drafted but are likely to define more exactly what constitutes a ‘nuisance tree’ and the ownership of dividing fences.

DERM rejects Inskip Point Stage 2

In August, the Queensland's newly formed environment department, the Department of Environment and Resource Management (DERM), in their concurrence agency jurisdiction under the Coastal Protection and Management Act 1995, directed Gympie Regional Council to refuse a large multi-use development at Inskip Point on the basis of its ecological impacts. In late September the developer, Rainbow Shores Pty Ltd, filed an appeal against the decision in the Planning and Environment Court.

Planning and Environment Court refuses Eco-Tourism development at Ingham

In late June the Planning and Environment Court decided an appeal against the decision of the Hinchinbrook Shire Council, on advice

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from the Department of Natural Resources as concurrence agency, to refuse a proposed eco-tourism development. Under the State vegetation management offset policy the developer had proposed an offset to address vegetation clearing, and impacts on the habitat of the endangered mahogany glider and the southern cassowary. The key issue for the Court was whether the vegetation offset was suitable.

Judge Durward SC, after considering expert evidence put forward by the parties, applied the precautionary principle and dismissed the appeal on the basis the proposed offset, in terms of how it addressed habitat values, was not suitable. The Court found the immediate impacts on the habitat connectivity for the mahogany glider and southern cassowary would be irreversible. There was, on the

evidence, a lack of certainty that the offset would compensate for the fragmentation of the habitat of these important species.

See *Everett v Hinchinbrook Shire Council and Department of Natural Resources and Water & Ors* [2009] QPEC 38 www.sclqld.org.au/qjudgment/2009/QPEC/038

Caselaw update

For updates on 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 case notes in the Planning Environment and Local Government Practice Area.

TASMANIA

Tom Baxter

Resource Planning and Development Commission now Tasmanian Planning Commission

Various significant changes are being made to Tasmania's Resource Management and Planning System.

Firstly, the Resource Planning and Development Commission has been renamed the Tasmanian Planning Commission, and its membership and functions extended. Relevant legislation enacted so far includes the:

- *Resource Planning and Development Commission Amendment (Miscellaneous Amendments) Act 2009* (Tas); and
- *Tasmanian Planning Commission Act 1997* (Tas).

The former Act, inter alia, replaces "Resource Planning and Development Commission" wherever occurring in State legislation with "Tasmanian Planning Commission". This replacement extends to the title of the *Resource Planning and Development Commission Act 1997* (Tas), which is now titled the *Tasmanian Planning Commission Act 1997* (Tas).

Membership of the Commission has been expanded to include the following two additional persons:

- a person, nominated by the Minister, who is either the Head of, or a State Service employee

employed within, the State Service Agency that is responsible for the administration of transport and provision of infrastructure; and

- a person, nominated by the Minister, who is either the person appointed under the *Water and Sewerage Corporations Act 2008* (Tas) to be the chairperson of the Regional Corporations and the Common Services Corporation or a person who is recommended by that chairperson.

The new Commission's website <www.planning.tas.gov.au> provides the following description of its role.

"From 1 September 2009, the Commission assumed the functions of the former Resource Planning and Development Commission and the Land Use Planning Branch of the Department of Justice.

The Commission oversees the State's planning system, is responsible for state of the environment reporting, assesses public land use issues and projects of State significance, and reviews water management plans. Recent amendments to the Act have added the following functions:

- to provide advice and support to the Minister in relation to the performance of his or her functions, and the exercise of his or her powers, in relation to land use planning under this or any other Act;
- to provide advice to the Minister in respect of matters related to land use planning;