

NELR recent developments

EPBC Act: Decision Regarding Traveston Dam

On 2 December 2009 the Environment Minister released his final decision for the Traveston Dam Project in Queensland. The decision refused the

project on the basis that it would have serious and irreversible effects on nationally protected species, namely, the Australian lungfish, the Mary River turtle, and the Mary River cod.

QUEENSLAND

Scott Sellwood

Environmental laws stop Traveston Dam

On 2 December 2009 federal Environment Minister Peter Garrett used his powers under the federal *Environment Protection and Biodiversity Conservation Act 1999* to formally refuse the proposed Traveston Crossing Dam. Minister Garrett's approval was needed for the dam to be built, in addition to the state approval already granted by the Queensland government.

Minister Garrett determined that the impacts on nationally protected species like the Australian lungfish, Mary River Turtle and Mary River Cod were unacceptable and could not be mitigated, despite the 1200 conditions imposed by the Queensland government.

Planning & Environment Court refuses Brisbane industrial development

In mid November 2009 the Planning and Environment Court dismissed a proposed industrial development at the former Wacol army barracks in Brisbane.

Although the refusal ultimately turned on the unacceptability of the proposal in terms of the amount of office space being sought and impacts on the existing traffic networks, the Court considered at length evidence of the alleged impacts of the proposal on the endangered regional ecosystem, *Eucalyptus seeana*, the Bullockhead Creek (which traverses the site) and, the many hollow bearing trees on the site.

In considering the environmental impacts the Court concluded, however, that minor changes to the proposed layout, with an appropriate off-site offset requirement, would have been an acceptable response to the impacts of the new use.

Metroplex v Brisbane City Council & Ors [2009] QPEC 110 <http://archive.sclqld.org.au/qjudgment/2009/QPEC09-110.pdf>

Garrett rejects Great Keppel Island 'revitalisation'

On 30 October 2009 Federal Environment Minister Peter Garrett rejected the proposed tourist re-development of Great Keppel Island on the basis that the impacts of the project on matters of national environmental significance were "clearly unacceptable".

The proposal, declared "State Significant" under Queensland development laws, was to include: a 300 room hotel and day spa, 1700 resort villas, 300 resort apartments, a ferry terminal, retail village, golf course and sporting oval.

New planning laws commence

Queensland's new *Sustainable Planning Act 2009* commenced on 18 December 2009.

Stay tuned in 2010 for a detailed look the new planning Act and associated regulations. In the meantime, please see www.dip.qld.gov.au/spa for information.

Rail corridor realigned to protect koala habitat

A section of the proposed Southern Freight Rail Corridor, which will, ultimately, form part of a future Melbourne to Brisbane inland rail network, has been realigned in an effort to protect koala habitat and minimize impacts on landowners. A revised Assessment Report, as part of the planning and impact assessment for the project, is expected early next year.

The Department of Transport commissioned this long-term planning study to identify and preserve the corridor for future rail freight transport.

Building laws to protect designs for sustainability

The *Building Act 1975* has been amended to provide better protection for sustainable architecture and

landscaping designs. The changes are twofold and are contained in a new Chapter 8A.

Under Part 1, a sustainability declaration, a compulsory checklist covering the buildings energy, water, safety and access features, must be completed by the seller when selling a house, townhouse or unit. It will be required as part of the sale from 1 January 2010. Part 2 stops certain persons from restricting the use of sustainable and affordable design features such as light coloured roofs, single garages, smaller houses and solar hot water systems.

The changes in Chapter 8A, Part 2 affect a number of other laws, including Queensland's body corporate laws. Previously, a body corporate could, through a community management statement, place limits on the adoption of sustainable design initiatives. Amendments to the *Body Corporate and Community Management Act 1997* now provide that a community management statement cannot conflict with the sustainable housing provisions in *Building Act 1975*.

<http://www.dip.qld.gov.au/sustainable-housing/index.php>

State leases for renewable energy projects on rural land

Amendments to the *Land Act 1994* will allow rural leases to support renewable energy projects that complement the existing use, such as agriculture or grazing. Prior to the amendments State leases could only be used for the purpose for which they were issued. The changes allow projects like wind farms to coexist with other uses of State land.

New integrity laws for Queensland

On 3 December Parliament passed the *Integrity Act 2009*. The Act establishes a new Office of the Integrity Commissioner; gives legal force to the Register of Lobbyists and bans success-fees for lobbyists; and brings the actions of government-owned corporations within the jurisdiction of the Crime and Misconduct Commission. The law will commence 1 January 2010.

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.

South Australia

Victoria Shute

Regulated Trees make their Parliamentary comeback

In 2007, the Development (Regulated Trees) Amendment Bill was introduced into Parliament with the intention of significantly changing South Australia's tree protection regime. This Bill lapsed in 2008.

Currently, trees which meet certain measurements are considered to be "significant trees". It is an offence to damage or remove such trees without first obtaining a development approval under the Development Act 1993.

Recently, the Development (Regulated Trees) Amendment Bill 2009 was reintroduced into the Legislative Council, and passed both Houses on 26 November 2009.

The 2009 Act is substantially the same as the 2007 Bill. The main changes which this Act will make to the Development Act 1993, when it comes into force are as follows:

1. A two-tier system of "regulated trees" and "significant trees" will be created.
 - 1.1. Trees meeting certain criteria to be specified by Regulation will be "regulated trees".
 - 1.1.1 It is presumed that applications for the removal of "regulated trees" will be assessed against less vigorous criteria than that applying to significant trees.
 - 1.2. Trees will only be "significant trees" if they are specifically declared as such within a