

NELR recent developments

a General Exempt Development Code in Part 2 while the Housing Code, pursuant to Part 3 of the Codes SEPP operates for complying development. The Codes SEPP and council's current controls for exempt and complying development will co-exist until 27 February 2010. During that time, if the State and local controls regulate the same development as either exempt or complying, the Codes SEPP will prevail. If the controls differ for the same development, the proponent can elect which control to apply. The General Exempt Development Code includes 41 types of exempt development ranging from balconies, decks, patios, pergolas, terraces and verandas, to carports and retaining walls.

For complying development, four main categories are created by the Codes SEPP that mainly relate to dwellings and include provisions for the demolition of one and two storey dwellings. Further, the Housing Code will enable a broad range of new homes and home renovations to be approved in only 10 days, without the need for a development application or council approval. The Housing Code

allows an applicant to take their design directly to a private certifier who must then adopt a tick-the-box type check on whether the design meets the pre-set criteria within the new Housing Code. If it does, then a certificate of approval **must** be issued within 10 days with no notice being provided to neighbours until after approval.

New stop work orders

Provisions commenced on 2 March 2009, amending section 121B of the *EP&A Act* to allow for Council to issue immediate stop work orders for works that breach the *EP&A Act* or that impact adjoining neighbours.

Reforms, reforms, reforms....

With those of the planning reforms that have commenced not yet seriously tested, there is likely to be further tinkering around the edges, at least until all councils implement the Standard LEP by March 2011.

QUEENSLAND

Scott Sellwood

Environmental Law and Policy Changes

Nature Conservation

- Interim measures to protect remaining urban koala populations in SEQ came into force on 12 December 2008 and will continue operating until 1 July 2009 when they will be replaced with final measures contained in the finalised SEQ Regional Plan. The draft SEQ Koala state regulatory provisions replace current koala protection measures (the Koala Conservation Plan under the *Nature Conservation Act*) within the SEQ urban footprint and identify interim koala habitat protection areas which place limits on where material change of use, subdivision and clearing can occur. As with other state regulatory provisions the Department of Infrastructure and Planning is a concurrence agency for development in interim koala habitat protection areas. This means that within the urban footprint, DIP will assess applications

affecting koala habitat, not the EPA. The draft regulatory provisions also include a new Offset Policy for koalas.

- Thirteen new Nature Refuges have been declared, protecting about 65,000 ha of forest in coordination with private custodians (including Running Creek Nature Refuge which, alone, protects 38,570 ha). Additionally, Bluff Hill, Gamma and Mt Toby forest reserves have been designated as national parks.
- Release of the Statewide Landcover and Tree Study (SLATS) has brought mixed responses from government and environment sector. The report reveals that 235,000 ha of bush was cleared in Queensland during 2006-7, representing a 37% decrease from previous year. The 235,000 ha represents 60% of all land clearing in Australia.

Climate Change

The government recently announced its intention to develop a Climate Change Management Plan for SEQ as a component of the revised SEQ Regional Plan. Key management outcomes must be included in the binding part of the SEQ Regional Plan (the regulatory provisions) for the reforms to be effective, and enforceable. The Climate Change Management Plan will be finalised by mid 2009 and will include:

- annual monitoring of the emission trends for SEQ, leading to a requirement for all state and local planning and infrastructure development policies regarding land use and transport to demonstrate how they will reduce emissions and adapt to climate change;
- a climate steering group to advise on best practice for pilot projects in urban growth areas;
- the SEQ Plan requiring nearly half of all new residential and employment growth be in existing urban areas, to alleviate additional transport emissions;
- encouragement in the SEQ Plan for sustainable housing design to reduce energy and water use, and incentive and awareness campaigns to encourage greater use of renewable energy;
- identification and protection within the SEQ Plan for locations suitable for renewable energy resources and carbon storage, and promotion of tree planting and land management practices that store carbon;
- predictions of future climate hazards and areas that many require more planning, and identification of areas or sectors which need prioritising for climate adaptation;
- consideration of climate hazards in coastal areas for new housing, with standards developed for new buildings and infrastructure in risk areas; and
- targets in the revised SEQ Plan for reducing the amount of greenhouse gas emissions from land use, urban development and transport in the region.

Planning and Development

- *Planning and Environment Court Rules* have been revised. The revision formalises those Court practices that have evolved since 1999, including the role of the ADR Registrar (see Part 5 of the 2008 rules). One important addition to the Rules is the relocation of the requirements for the expert meeting process, formerly contained within Practice Direction 1 of 2006, into Part 3, Division 3 of the new Rules. The new rules, introduced 12 December 2008, are available from www.legislation.qld.gov.au/LEGISLTN/SLS/2008/08SL410.pdf.

A new practice direction to guide conduct of appeals in the Court is also available. This practice direction replaces no 1 of 2006 and, although shorter than its predecessor, is in substance the same and preserves the existing time limits for bringing an application for directions (within 3 months after filing appeal) and for exchanging draft orders (no less than 2 days before review date). See www.courts.qld.gov.au/PracticeDirections/PlanningandEnvironment/PE-PD2of2008.pdf.

- All documents filed in the Planning and Environment Court are now available electronically via the Courts website. Efiles is accessible here <http://www.courts.qld.gov.au/142.htm>
- FNQ Regional Plan and Regulations were released on Friday 13 February 2009. See www.dip.qld.gov.au/regional-planning/regional-plan-4.html
- Further alarming changes to the laws protecting Queensland's heritage places follow amendments to the code for assessing development on a local heritage place. The amendments to the *Queensland Heritage Regulation 2003* water down the purpose of the code, to now contemplate demolition or removal of a local heritage place if "no prudent and feasible alternative" exists.
- Amendments to the *Transport Planning and Coordination Act 1994* recognise that new developments should support active transport such as walking and cycling and its associated infrastructure.
- The Milton Brewery will be protected from criminal and civil lawsuits by new residents

NELR recent developments

relating to air emissions, noise and light pollution, under new legislation. The *Planning (Urban Encroachment – Milton Brewery) Act 2009*, enacted 23 February 2009, will not affect residents already coexisting with the brewery and does not effect the brewery's requirements to comply with its *Environmental Protection Act* licence, or liability for any physical or personal damage if there was an incident.

- Queensland's resort development laws have been upgraded. The changes update body corporate management processes and administrative matters regarding land use changes within resort land.

Environmental Protection

- New *Environmental Protection Policies* (EPPs) for Air and Noise commenced on 1 January 2009. Both policies expand on the list of environmental values that apply across Queensland's air and acoustic environments and introduce revised maximum air pollutant levels and maximum acoustic levels for different activities. However, carbon dioxide has not been included in the EP (Air) Policy as an indicator of declining air quality.
- Amendments to the *Environmental Protection Policy for Water 1997*, which came into force on 12 December 2008, better define the environmental values of and management intent for waters and reflect the relocation of many water pollution offence provisions into the *Environmental Protection Act 1994*.
- The state government has assembled a taskforce to investigate what is causing fish deaths and abnormalities among fish larvae at a Noosa River hatchery.
- Queensland EPA is investigating 10 mines in central and northern Queensland for possible liability for environmental harm after on-site contaminated waste wells overflowed following this year's heavy rains
- From 1 January 2009 the value of a penalty unit (basis for calculating fines for offences under Queensland law) will increase from \$75 to \$100.

Water

The *Water Fluoridation Regulation 2008*, notified on 5 December 2008, sets the timeframes for when fluoridated water will be introduced into Queensland's water supply.

Marine protection

- The independent study of Queensland East Coast Inshore Fin Fish Fishery commissioned by the Federal Environment Minister after public concern about shark fishing in the Great Barrier Reef has now been released. The Federal government has extended the current EPBC export approval until 28 February 2009 while considering the reports findings. You can access the report at: www.environment.gov.au/coasts/fisheries/qld/east-coast-finish/index.html
- The *Fisheries (East Coast Trawl) Management Plan 1999* has been amended to improve management of scallop and prawn stocks in Central region, introduce requirements for turtle excluder devices (TEDs), prohibit certain activities in Southern trawl fishery area, and modify maximum and minimum mesh net sizes certain areas. Detailed amendments to the *Fisheries Regulation 2008* were also introduced in December. These changes set a framework for the ways commercial and recreational harvest of inshore fin fish can be undertaken and implement minimum and maximum fish size limits that apply.
- New offence provisions have been introduced into the *Transport Operations (Marine Pollution) Act 1995*. The new provisions include making it an offence to discharge sewerage (unless key conditions are met) and for boat owners and skippers to not carry signs explaining to passengers and crew their obligations relating to rubbish disposal while at sea.

Queensland State Election 2009

Following the March 2009 elections the re-elected Labour Government announced the amalgamation of the 23 government departments into 13 super-departments, governed by 18 Ministers.

NELR recent developments

Environmentally relevant new departments are:

- Environment and Resource Management (encompassing the Environmental Protection Agency and Natural Resources and Water)
- Employment and Economic Development (encompassing Mines and Energy and Primary Industries and Fisheries)
- Infrastructure and Planning (encompassing Local Government)
- Transport and Main Roads; and
- Public works

During the election campaign the Bligh government promised:

- To reduce pesticide and fertiliser run-off to the Great Barrier Reef by 50% within 4 years, a target to be reflected in new regulations to be introduced to Parliament by June 2009;
- A 3 month moratorium on clearing endangered regrowth vegetation, while talks are held between farmer groups and the government on regulating regrowth clearing;
- To progress with the Federal government a World Heritage nomination for those parts of Cape York that have the agreed support of conservation and Indigenous interests;
- To declare three south-west channel country rivers as Wild Rivers;
- To amend relevant laws to ensure that Queensland leasehold farmers have the same rights as freehold farmers in being able to earn carbon trading rewards for growing vegetation on their property, and extend eligibility from plantations to include regrowth vegetation;
- To introduce a government bulk-buy of 200,000 solar hot water systems which will be sold to households over 3 years for \$500 each (\$100 for pensioners), with approximately 60,000 systems to be available by July 2009;
- To direct \$57 million for a green army of over 3000 unemployed or school leavers for revegetation and cleaning the state's waterways, beaches, national parks and green spaces; and
- Build a 2000 km Great Walk from Daintree River to the tip of Cape York within 3 years.

- A Cleaner, Greener Buildings policy to:

1. Fast-track new eco-friendly developments through a 'Green Door' by introducing green case managers into the Department of Infrastructure and Planning and granting Ministers the power to require faster decisions on quality green developments;
2. Require new houses and major renovations to meet 6 star or equivalent energy efficient standards by the end of 2010, and new units to meet 5 star or equivalent energy efficient standards by the end of 2010;
3. Prevent Body Corporates and developers from banning energy efficient building materials such as lighter roofs and solar hot water systems;
4. Require new units and office buildings to provide electricity sub-metering which will give office tenants and unit owners an incentive to reduce their power bills and cut greenhouse gas emissions by the end of 2009;
5. Require end of trip facilities for cyclists and joggers – including racks, lockers and showers – in all new major developments around key activity centres.
6. Establish a \$500,000 Green Building Skills Fund to boost sustainability expertise through 3000 green training places in accredited courses, with participants having 50% of the course costs subsidised.