

edo news

Newsletter of the Environmental Defender's Office WA
Vol 8 No. 1 March 2002

Location! Location! Location!



EDO Coordinator, June Lowe, outside the EDO's new home at Kings Hotel Complex, 2nd floor, 533 Hay Street, Perth.

EDO on the move ...

The Environmental Defender's Office is about to embark on an exciting new era, as we are move to new premises! Our present tenancy, in Law Society House, has come to an end as the building has been sold. After a long search, we have found excellent new premises on the 2nd floor, The Kings New Office Tower, 533 Hay Street (corner Pier Street). Our phone, fax and email numbers will remain the same.

This new location is centrally located and near the Supreme Court. The office has great natural light and is large enough to allow for the future expansion of the EDO.

We will be shifting out of Law Society House on the weekend of 16/17 March, but unfortunately the new office partitioning and cabling will not be completed until Friday 22 March. In the interval, we will be working from various locations, with the phones, fax and internet diverted. This will be will be an "interesting" office-less experience for us all and we apologise for any inconvenience.

We are looking forward to being set up in our new office, and hope you will join us at our office-warming ...

Office Warming

See the EDO's new home - and help us warm the new office!

Friday 26 April

5pm - 7pm

RSVP by Wed 24 April on 9221 3030

Contributions (plate of food or bottle of wine) welcome.

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Kings New Office Tower
Level 2, 533 Hay Street, Perth WA
Website: www.edo.org.au/edowa/

Ph (08) 9221 3030
Fax (08) 9221 3070
Email: edowa@edo.org.au

Location! Location! Location!

Moving Appeal

Moving offices is expensive! The removalists, the 'fit-out' costs (putting up partitions etc) plus the costs of relocating phones and computer networks will cost nearly \$10,000.

We are making an urgent appeal to our members and supporters to consider a **tax-deductible donation** to help us re-establish our premises.

As we hope to reside at our new location for 5 and possibly 10 years, this is a very worthwhile investment in helping us provide an efficient and effective service for the environment.

Please consider making a donation to the EDO at this critical time ... we need your support so our Environmental Defenders have a fitting habitat!

Furniture

We are also appealing for suitable secondhand furniture.

We need a reception desk and reception furniture, a desk for our second solicitor, and a large meeting table and chairs. Additional bookshelves and filing cabinets would also be welcomed.

If you think you can help with any of these items, please call June or Marilyn on 9221 3030.



EDO's June Lowe and contractor John Pettersson discuss location of partitions in the new office

FrEDO

The financial challenge of operating in a commercial rental market will make significant inroads into our budget.

Our fledgling **Friends of EDO (FrEDO)** group will be meeting soon to galvanise fundraising activities. If you would like to be involved with FrEDO, please call June on 9221 3030.



Looking for Neighbours

The rest of the second floor at the Kings New Office Tower is vacant.

We would love to have like-minded neighbours and we recommend this location to anyone looking for very reasonably priced, centrally located, comfortable office space.

On the ground floor is the Kings Hotel restaurant and bar – handy for those lunches and after work meetings ...

For further information about renting space in the Kings New Office Tower, contact the agent, David Ross of *Ross and Associates* on 9218 9311.

EDO Conference - Lines in the Sand, Coast Law in Western Australia

15 May 2002 Fremantle Sailing Club

Growing a conference

It is a satisfying business being part of growing a conference. The first seeds were planted in our early planning meetings when our plans for the year ahead were debated. From this germ of an idea, the conference slowly took shape through consultations with community groups and others, gleaning ideas and building a program of maximum interest. Quotations, budgets and funding applications were prepared, while we proceeded with optimism, contacting hoped-for speakers. At this stage, the program is like quicksand, gradually consolidating as speakers confirm. After much negotiation and tweaking of ideas, finally all the sessions fall into place – a gratifying moment! We held a competition for the title, and then creative juices flowed in putting together the publicity materials, which were ably designed by Emma Fletcher.

The enclosed flier is the result of these labours – as you can see, it will be an exciting conference with an impressive

array of speakers, presenting material which is much sought after by the environmentally concerned community.

Promotion

The next phase of the conference organisation is the promotion and publicity – and this is something we hope all our members will help us with. Can you find a good place to display the enclosed conference poster/programme? If you can distribute more copies, please let us know as soon as possible. THANK YOU, your assistance with the publicity process will help make this a successful event!



Sponsorship

Sincere thanks to the sponsors whose support has enabled us to stage this ambitious conference at a readily affordable price. The Lotteries Commission of WA is a major sponsor, subsidising the conference fees for students and community groups. We have also received substantial grants from The Myer Foundation and CoastWest/Coastcare – whose generous support also covers other EDO Coast Law activities throughout this year. Other conference sponsors are FISHCARE(WA) (a State Government initiative), Fremantle Port and Cullens Wines.

Book

Following the conference, the papers will form the basis of a book *Coast Law in Western Australia*. This will be EDO's third publication and will join *Guide to Environmental Law in WA* and *The Law of Landcare in WA* as a "must have" for your environmental law bookshelf!

Fire and the Law

The Environmental Defender's Office has been invited to present a paper to the Department of Conservation and Land Management Fire Symposium, *Fire In South-Western Australian Ecosystems: Impacts and Management*. The EDO paper, "Fire and the Law" addresses issues of terminology, regulation and policy implementation.

The many sources of planned and unplanned fire include traditional Aboriginal cultural activities; pastoral, agricultural, horticultural and conservation practices; development and clearing; storage and disposal of rubbish and hazardous goods; campfires and lightning strike. Fire risk activities might be undertaken by Aboriginal traditional owners, government agencies, local government, freehold landowners and occupiers, companies and corporations,

picnickers, tourists or campers.

The legal rights and obligations, in respect of choosing and controlling a pre-emptive burn, may arise quite separately from the duties and obligations of the owners and occupiers of land to minimise the risk of or control an unplanned wildfire. The EDO paper reviews those rights and obligations as they apply on the various land tenures, at common law or by statutory duties, rights and obligations.

The CALM Fire Symposium is to be held on 16, 17, and 18 April 2002, at The WA Turf Club, Function Centre, 70 Grandstand Road, Ascot. The symposium is open to the public but registrations close on 21 March 2002.

The contact person for the CALM Fire Symposium is Glenda Lindsey on telephone 9334 0463.

Standing before the Town Planning Appeals Tribunal

Gnarabup Beach Pty Ltd v the Shire of Augusta Margaret River [2002] WATPAT 4

The Decision

The application made by the Leeuwin Conservation Group Inc (LCG) joining the appeal as a third party (joinder) in the Town Planning Appeals Tribunal in the matter of *Gnarabup Beach Pty Ltd v the Shire of Augusta Margaret River [2002] WATPAT 4*, was denied provisionally to the LCG on the 13 November, 2001. In any event, the Town Planning Appeals Tribunal (the Tribunal) handed down its decision on the 28 February 2002, that it lacked jurisdiction to entertain the appeal by the landowner, Gnarabup Beach Pty Ltd (GBPL). The facts surrounding this appeal were as follows.



Bush Lawyer
Sandy Boulter

Mr Zelestis QC for GBPL. In its decision handed down 28 February 2002, the Tribunal found that it lacked jurisdiction to entertain the appeal.

Standing

In relation to the question of standing (ie the right to be heard before the Tribunal) of the Leeuwin Conservation Group (LCG), the Tribunal held that the basis for rejecting the application for joinder of the LCG was not the lack of relevant interest in the subject matter of the appeal, but rather the extent to which a contribution could be made to the proper

resolution of the issues that differed from the Shire.

Of particular interest is that the finding against the joinder was provisional, leaving the door open for the LCG to make a further application for joinder during the course of the appeal, should it become apparent to the LCG that it would want to make submissions not made by, or divergent from, the submissions made on behalf of the Shire. Notwithstanding, the denial of the joinder application, the role of the LCG and the EDO in this matter was important.

The Role of the LCG and the EDO

The Shire, having first objected to the jurisdiction of the Tribunal to hear the appeal, had resiled from that position in its amended response to the grounds of appeal. Having denied the joinder application, the Tribunal found itself without a proper contradictor for the proposition by GBPL that the Tribunal had jurisdiction to hear the appeal. At this point in the proceedings on 13 November 2001, Counsel for the Shire advised the Tribunal that the Shire might revive its objection to jurisdiction, which in fact it did.

Had there been no intervention from the EDO on behalf of the LCG, the issue of jurisdiction might not have been argued and the appeal against the Shire's recommendation proceeded. The effect of a hearing progressing may have protracted the Outline Development Plan process, thereby allowing the subdivision process to be completed before a Structure Plan was endorsed by the WAPC. This course of action would have been inconsistent with the provisions of TPS 18. However, the WAPC appears to be of the view that it is not bound by the procedural requirements of TPS18, in relation to an Outline Development Plan, when it

Local Planning

The local town planning scheme for Gnarabup, in the Augusta-Margaret River Shire (TPS18) requires an Outline Development Plan to guide the Shire and the WAPC when making development and subdivision decisions at Gnarabup. TPS 18 requires a draft Structure Plan to be advertised for public comment and thereafter, for the Western Australian Planning Commission (the WAPC) to adopt or reject a final Outline Development Plan following the recommendation from the Shire in light of the public submissions.

The Shire of Augusta Margaret River (the Shire) received 711 public submissions between December 2000 and February 2001 against the draft Structure Plan submitted by Gnarabup Beach Pty Ltd (GBPL). Many of the 711 objections were based on environmental issues, as was the objection raised by the LCG. Accordingly, the Shire Council resolved to recommend to the WAPC that the draft Structure Plan be amended to show that there be no subdivision of land on the west side of Wallcliffe Road, at Gnarabup.

The Appeal

Gnarabup Beach Pty Ltd (GBPL) lodged an appeal in the Tribunal against the recommendation of the Shire to the WAPC. This appeal may have been made by GBPL because there is no right of appeal under TPS18 or the *Town Planning and Development 1928*, against a decision of the WAPC in respect of an Outline Development Plan.

Submissions as to jurisdiction were heard by the Tribunal on 4 December 2001 from Mr Buss QC for the Shire and

continued page 5...

Standing before the Town Planning Appeals Tribunal *continued ...*

considers and resolves subdivision applications.

The Leeuwin Conservation Group's objection to the subdivision of land on the west side of Wallcliffe Road is primarily on the lack of merit of the decision on environmental grounds. These grounds are relevant considerations in an orderly and proper planning process under TPS18 and the *Town Planning and Development Act 1928*.

Supreme Court action

The Supreme Court application by the LCG against the decision of the WAPC to grant the subdivision of land on the west side of Wallcliffe Road at Gnarabup, in the absence of an Outline Development Plan, is made on technical legal grounds. This is because third parties (including the LCG) do not have standing to commence an appeal against the merits of a subdivision decision in the Tribunal or the Supreme Court of Western Australia. The application by the LCG, to quash the decision of the WAPC to grant the subdivision of land on the west side of Wallcliffe Road at Gnarabup, will be heard in the Supreme Court on the 18 and 19 March, 2002.

What is in a name?

The Administrative Appeals Tribunal has allowed an appeal brought by the EDO on behalf of a person seeking access to documents held by the National Registration Authority.

The main point at issue in the appeal was whether the name of a scientist who reviewed the public health and environmental risks of releasing Rabbit Calicivirus Disease baits was "personal information" which could be withheld.

The Tribunal found that the name could not be withheld using the "personal information" exemption in the *Freedom of Information Act 1982* (Cth), in part because "the public interest would be served by the public knowing the credentials of experts called upon to review, independently, a request to register a product, which by its very nature, may have an unintended environmental impact... Only by identifying the particular person is it possible to gather that objective information on which to found a judgement as to the expert's independence, qualifications, experience and suitability for the task."

The National Registration Authority did not appeal the decision, and the documents have been provided to the EDO's client.

Wegner and National Registration Authority for Agricultural and Veterinary Chemicals [2002] AATA 36 (22 January 2002).

Report

Genetically Modified-Free Zones

The EDO has published a report that addresses legal issues concerning the creation of "GM-Free Zones."

The report is not intended to deal with the merits of the GMO debate. However it accepts as its starting point that there is a great deal of concern about the environmental and health implications of GMOs.

This report considers the scope for the creation of GM-free zones at the Commonwealth, State and local level. In particular, it considers:

- The *Gene Technology Regulation Act 2000* (Cth);
- The *Gene Technology Regulation Bill 2001* (WA) ("the State Bill")
- whether local governments can provide in their catering contracts that genetically modified foods should not be used; and
- whether local governments may make use of town planning schemes or local laws to declare GM-Free Zones.

The report can be obtained by ringing the EDO, and will be placed on the EDO website.



Review of the Project Development Approvals System

The EDO has expressed concerns that a recent report on the development approvals system focuses on streamlining decision-making, with inadequate attention to retaining the public benefit offered by existing regulation.

The report, published in January 2002 by a committee appointed by the Minister for State Development, sets out a number of different options to coordinate and integrate the development approvals system. These options range from the “enhancement” of the existing system to the creation of new, integrated approvals processes for major projects. The report is of an interim nature, and public comment has been invited.

One of the “enhancements” suggested by the report is that the Mining Warden’s jurisdiction to hear environmental objections should be abolished. The report appears to proceed on the assumption that if a mining proposal is not assessed by the Environmental Protection Authority, then it is not significant enough to require public input through objections in the Warden’s Court. This assumption is wrong because only a handful of mining proposals are assessed by the EPA – in the last financial year, only 3 out of the 249 mining proposals that were approved were subject to formal assessment.

The EDO submission on the report puts forward criteria for a good approvals system (see inset box), and analyses the report’s recommendations in the light of these criteria. The submission also puts forward an alternative option for consideration, which would involve the creation of a Sustainability Commission to ensure that major projects are assessed against sustainability criteria.

The report is available at: www.ministers.wa.gov.au/brown or can be obtained by ringing 9288 4578.

The EDO submission can be obtained by ringing the EDO or accessing the Conservation Council web site at <http://members.iinet.net.au/~conswa/subs/keating.htm>. It will also be placed on the EDO web site.

Criteria for a good approvals system

- ◆ **Processes are clearly defined.** It is in the interests of the community, as well as industry, that approvals processes are clear and easy to understand.
- ◆ **Duplication of decision-making is minimized.** In general, duplication of decision-making is not desirable as it can, amongst other matters, lead to “buck-passing” between decision-makers, both in terms of assessing the impacts of development and in enforcing conditions of approvals.
- ◆ **Decision-making is transparent.** Transparency of decision-making requires, amongst other matters, that applications, supporting information, approvals and reasons for decision are available to members of the public.
- ◆ **Decision-making has integrity.** Amongst other matters, integrity of decision-making requires that applications are not pre-judged by decisions being made before all relevant information is received and the public has had an opportunity for input.
- ◆ **There is an opportunity for real and effective public input.** Approvals processes should include public consultation where the project under consideration has the potential to affect people’s private interests, their quality of life or the public interest in the natural environment.
- ◆ **Conditions on development approval are enforceable.** This requires that conditions are framed so that they can be objectively audited, and that steps can be taken to ensure compliance.

Public Comment on Planning Matters

Public submissions are now open for comment on the following:

1. *Western Australian Planning Commission Act 1985* - submissions due 2 April 2002, and
2. The *Model Scheme Text* provisions for the development of town planning schemes - submissions due 7 June 2002.

For more information about this, ring EDO’s Sandy Boulter.

Staff changes

EDO Principal solicitor, Michael Bennett has accepted a short-term consultancy with the Department of Premier and Cabinet, helping the government develop its environmental law reform program.

The appointment is a compliment to the EDO and testimony to the reputation Michael has developed as an expert in Western Australian environmental law. Although we shall miss Michael in the office, we wish him well in this rewarding new venture, and look forward to his return later this year.

Taking Michael's place will be Lee McIntosh. Lee is a founder member of the EDO and was a member of the EDO Management Committee 1999-2000. She will be returning to Perth from her current position with Mallesons Stephen Jaques in Sydney in order to take up this position at EDO.

Lee has had a firm focus on environmental law for many years and has published an impressive array of papers in the areas of mining law, fishing rights, carbon trading, accountability of waste and recycling, and international investment.

We are very fortunate that Lee is able to take up this position at the EDO and warmly welcome her to the "hot seat"!



Lee McIntosh

Holiday

EDO's Admin Assistant, Marilyn Ashton, will be taking 3 months leave from mid-April 2002 to visit family in America. A temporary replacement for Marilyn is being sought.



Marilyn Ashton

Volunteers

We would like to acknowledge three special EDO volunteers: Rick Fletcher, Katherine Navarro, and Katherine Eyres.

The two Katherines and Rick have been regular volunteers at the EDO for many years. They have all recently completed their law degrees and taken articulated clerkships. Of course we are very sorry to lose their energy and talents around the EDO but wish them well in their new careers.

Fortunately for the EDO, the New Year has brought a few new faces into the office, with UWA law students **Chelsea Spagnolo** and **Kate Pedersen** joining our band of legal researchers. They join **Chris Bailey** and **Kate McConigley** as regular EDO volunteers.

Thank you to our donors ...

We are very grateful to the following donors for their generous support over the period January to March 2002:

Sue Ellery MLC
Janet and Barry Dufall
Jill Robertson
Lisa Loggie
Ancient Fire

Major Donors

Malcolm McCusker QC
Craig Chappelle
Chrissy Sharp MLC

Donors-in-kind

Jean Pierre Clement
Tony Friday

Condolences

Mr R A Sandford, an EDO founding member, passed away recently. The staff and Management Committee of the EDO offers condolences to Mrs Sandford.

New Book

Law of Landcare - 2nd edition Out Now!

We are pleased to announce that the Second Edition of the Law of Landcare is now available.

The second edition has been substantially revised in response to a number of changes in the law since the first edition was published in 1998. These changes include:

- substantial water law reforms
- the introduction of the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999
- new laws regulating genetically modified organisms.

A number of people assisted in producing the second edition, but thanks are due to Jean-Pierre Clement in particular for donating a great deal of time to the research, writing and printing of the new book.

The Law of Landcare (2nd edition) can be purchased from the EDO for \$40 including postage, handling and GST.



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Please make your donation payable to the EDO (WA). We thank you for your generosity.
Environmental Defender's Office (WA) 2nd floor, The Kings New Office Tower, 533 Hay Street, Perth 6000

Thanks to Law Society

For the past six years, the EDO has benefited from the generosity of the Law Society in their allowing us to use the premises at Law Society House for a 'peppercorn rent'.

This has been a great boon for us and has freed valuable resources for our work.

We send our sincere thanks to the Law Society - their support has been critical in the successful establishment of the EDO's services.



EDO Solicitor Michael Bennett and June Lowe look over plans for EDO's new office