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edo NEWS

Newsletter of the Environmental Defender's Office WA (Inc)

COOGEE COASTAL ACTION COALITION IN SUPREME COURT

The Coogee Coastal Action Coalition Inc (CCAC) has taken its campaign against the proposed Port Coogee marina in Cockburn - which is really a canal housing project over the ocean - to the Supreme Court.

In June this year, Planning Minister Alannah MacTiernan took the unprecedented step of granting approval for 1.5 kilometres of coastal strip and 37 ha of foreshore and seabed to be rezoned 'urban' in the Metropolitan Region Scheme (MRS). Due to a prior agreement between the developers and the Western Australian Planning Commission (WAPC), the rezoned land is to be transferred to the developers free of cost. In effect, the Minister has authorised parts of the foreshore and ocean to be privatised in perpetuity.

Marina and boat harbours like those at Hillarys and Fremantle have been earmarked traditionally as 'parks and recreation' and/or 'public purposes' reservations in the MRS. Under such public reservations, the use of traditional boat harbours has been regulated successfully for the benefit of the broader community, but has not been alienated.

The Government is now all but set to transfer the seabed at Coogee to developers connected with Australand Holdings Ltd, as well as large areas of the coastal strip, including old sand dunes and natural limestone headlands. Australand intends to subdivide most of this land and seabed into small residential lots, including canal-style lots.

The portion of the Port Coogee development over the ocean is the same size as the Hillarys Boat harbour. Whilst the proposal includes a boutique marina, the majority of the ocean and seabed are to be used solely for private houses. Nearly two thirds of the ocean area involved is to be filled in and there will be no boat ramps, boating clubs or boat lifting and maintenance facilities in this marina. Indeed, the actual marina component is quite small.

The CCAC campaign recognises the need for a new boat harbour, but it also argues that there are several alternative sites where a marina can be built without destroying more natural beaches.

CCAC has spent three years campaigning for the Port Coogee development to be modified so that the beaches are retained and redeveloped as the area's first genuine regional beach node available to the public, but still incorporating appropriate urban development.

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Part of the CCAC legal challenge relies on evidence that indicates the Minister allowed the developers to keep canal housing over the sea in order to allow an internal rate of return to the developers of more than 21% rather than a reduced IRR of 16.1%. CCAC is saying the Minister acted for improper purposes in rezoning a large area of the beach and seabed to benefit the private interests of the developers.

The CCAC case also claims the development will take away the common law rights of the public to access, and use, the beach and sea area for activities such as swimming, fishing, diving and navigating.

CCAC argues that the Minister and the WAPC did not properly consider the planning matter but acted to carry out the project agreement which was entered into between the WAPC and the developers. CCAC contends that in doing this, the decision-makers ignored the State Coastal Planning Policy, including setback requirements, which came into operation in June 2003.

The EDO and Dr Hannes Schoombee represented CCAC on these issues at the initial hearing on 1 December 2004 seeking leave to proceed, by way of "Orders Nisi", and a Stay, which would prevent the transfer of the seabed and foreshore (amongst other things) until the action has been fully determined. At the time of going to print, the decision of McLure J on these issues had not yet been given.

For further information, contact Leigh Simpkin at the EDO, or Andrew Sullivan, Chairperson of CCAC. Tel: 9433 3398.

EPBC ACT (Cth) PROTECTS WETLANDS

Golnar Nabizadeh

This case affirms of the importance of acting responsibly in relation to designated Ramsar wetland sites.

***Minister for the Environment & Heritage v Greentree (No 3)* [2004] FCA 1317**

The present case - Greentree (No. 3)

In this case, the Minister sought orders requiring the payment of pecuniary penalties and other relief under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('*EPBC Act*'). In *Minister for the Environment & Heritage v Greentree (No 2)* [2004] FCA 741 (*Greentree (No 2)*), Sackville J found that Mr Greentree and Mr Auen had contravened s 16(1) of the *EPBC Act* because they had taken action that had a significant impact on the ecological character of a 'declared Ramsar wetland'.

The issues in *Greentree (No. 3)* concerned:

1. The number of trees that Mr Greentree and Mr Auen should be required to plant (subject to securing the licence of the Proprietors), and
2. How much should be paid in fines.

Background

In February 2003, Mr Greentree, a proprietor of 'Windella', instructed the then farming operations manager of Greentree Farming to clear and plough an area of wetland on Windella in preparation for a seedbed. Prior to February 2003, when the clearing and ploughing on the Windella Ramsar site took place, it had lost some of the attributes of a pristine wetland because of a previous clearing of about 20 percent of the site, a bushfire, the spread of the lippa weed, and the dredging of the Gingham channel that traverses the Windella site (para. 4). However, in *Greentree (No. 2)*, the court found that the Windella Ramsar site at that time retained important wetland attributes including the presence of native wetland plants and coolibah and casuarina trees, and the site also retained the potential to regenerate relatively swiftly.

Number of Trees

Sackville J found that a 50 per cent mortality rate would still allow more trees to survive to maturity than were on the site in February 2003. Accordingly, he required Mr Greentree and Mr Auen to plant 100 tree seedlings on the site.

Fines

The Minister submitted that Mr Greentree and, through him, Mr Auen, were well aware that the Windella Ramsar site was protected under the *EPBC Act* before they cleared and ploughed the site and planted wheat on a considerable portion of it. He also argued that the contraventions of s 16(1) of the *EPBC Act* were in the 'worst category' because of a number of aggravating factors, including that Mr Greentree had misled the Minister's Department about his intentions prior to clearing the site.

Sackville J found that the Greentree's and Auen's conduct in clearing, ploughing and sowing wheat on the Windella Ramsar wetland site was deliberate, because they were aware that any unauthorised action on their part that had a significant impact on the ecological character of Windella Ramsar site would constitute a contravention of the *EPBC Act* (para. 48) because it would largely destroy the character of the Windella Ramsar site as a wetland, at least for a lengthy period (para. 59).

One mitigating factor for imposing less severe penalties was that prior to the contravening conduct, the Windella site was not a pristine wetland (para. 62).

The maximum penalties for conduct which contravenes the section is $550,000 for an individual and $5,500,000 for a corporation.[1] Sackville J found that although the cases involved deliberate and sustained contraventions by Greentree and Auen of s 16(1) of the *EPBC* Act, he did not regard their conduct as within the worst category of contraventions for several reasons, including, that they had not previously been found by a Court to have engaged in similar conduct under the *EPBC Act*.[2]

Nevertheless, their conduct called for substantial penalties, not least to act as a deterrent to those tempted to override the legal protection accorded to sites judged to be of international importance (para. 81). The pecuniary penalties against Greentree and Auen were $150,000 and $300,000 respectively (para. 88), and additionally the Minister's legal costs.

1 Under s 16(1) of the EPBC Act.

2 Paragraph 80 contains other factors

Contact Leigh Simpkin for a copy of this case.

What is a Ramsar Wetland?

The Convention on Wetlands, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are presently 141 Contracting Parties to the Convention, with 1387 wetland sites, totaling 122.7 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance.

URBAN BUSHLAND COUNCIL (UBC) AT PERTH AIRPORT

On 19th August 2004, the Administrative Appeals Tribunal (AAT) determined the UBC's appeal against the Federal Minister for Transport and Regional Service's decision to allow clearing of 40ha of bushland (some of it nationally listed), at Perth Airport, to build a Woolworths distribution store. At the time of the decision, the application had already been on foot for 7 months.

In summary, the AAT's decision was that UBC did not have 'standing' under s 27(1) and s 27(2) of the *AAT Act* (which applies to the relevant Federal airports legislation under which the decision of the Minister was made).

Section 27(2) of the *AAT Act* states that:

"an organisation or association of persons, whether incorporated or not, shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organisation or association."

Although the UBC was recognised as a peak environmental and conservation body and just such an organisation had recently been granted standing in the *Save the Ridge case* [2004] ACTSC 13, the Deputy President of the AAT, SD Hotop distinguished this situation from the general law.

*"We're dealing here with the question of standing under the AAT Act but, perhaps more to the point, we're dealing with standing to seek review of a decision under the Airports Act, that of course being the Act which confers the jurisdiction on the Tribunal in relation to certain decisions under that Act, and that is in section 242 [*of the *Airports Act]."*

"I accept … the intention of Parliament regarding the person or persons who would have standing to seek review by the Tribunal of a decision of the Minister to approve a major development plan or, indeed, to reject a plan or, as in this case, to approve a plan subject to conditions. I accept… that the intention of Parliament, having regard to the subject matter, scope and purpose of that Act, is that standing is to be confined generally to the relevant airport lessee body in question and not to be granted to third parties – even to bodies such as the UBC."

Reference was made to the submissions on behalf of the Minister regarding the analysis of Dowsett J in the Federal Court in *Brisbane Airport Corporation Ltd v Wright* [2002] FCA 359. The contention by counsel for UBC that the *Brisbane Airport Corporation Ltd's* analysis of the subject, scope and purpose of the *Airports Act*, which led to its conclusion that Parliament must be taken to have intended that the Airport-lessee company alone is an 'interested party', for the purposes of standing to seek review of a decision, occurred in the context of an attempt to review a 'master plan' rather than a 'major development plan', was rejected.

In response to the evidence before the AAT of the UBC's objects being:

- to promote the recognition and conservation of urban bushland;
- to promote policy development for the protection and management of urban bushland; to provide an avenue for lobbying and seek legislative changes for bushland protection; and
- to raise awareness of the values and problems facing urban bushland,

the Deputy President of the AAT concluded that:

"I'm not prepared to go so far as to say that there is absolutely no relationship between the Minister's decision and those objects but what I do say is that any such relationship is of far too general, insubstantial and tenuous a nature to give standing …".

DENMARK CONSERVATION SOCIETY PERSEVERANCE PAYS OFF

Exploration and mining claims over 842ha of sensitive bush and prime farmland in the William Bay area near Denmark are set to be withdrawn, ending a five-year battle by local residents.

The Perth Warden's Court has advised the Denmark Conservation Society (DCS) that the proponents, Karl Wolzak and Dennis Backshall, have applied to withdraw applications to explore and mine for mineral sands in the area. A retention licence remains in dispute. Twenty-seven individuals and groups, including the Shire of Denmark, lodged official objections to the claims in June 1999 and a petition containing 1200 signatures was forwarded to former Mines Minister Norman Moore. DCS secretary Craig Chappelle said that the withdrawal was very welcome news. "This protracted dispute has involved hundreds of hours of voluntary work and thousands of pages of material," Mr Chappelle said. "It was always doubtful that the proponents had the capacity to proceed and a five-year watching brief has put a severe strain on local community and taxpayer resources."

He praised the efforts of DCS special projects officer Geoff Evans, the Environmental Defenders Office and Greg Mcintyre, SC who have provided legal advice and represented DCS in court hearings since 1999.

Mr Chappelle said that the society would now apply to have the area 'sterilised', a mining industry term meaning it could be declared off-limits for similar claims in the future.

"The area involved contains high natural conservation values and is a focus for tourism, as well as being prime dairyfarm land," he said. "The impacts of mining on these, as well as nearby Parry Inlet, the sensitive Owingup wetlands and William Bay National Park would have been - and remain - unacceptable.

AN END TO PUBLIC OBJECTIONS TO MINING IN WA?

Amendments to the *Mining Act 1978* (WA) have recently been passed by both Houses of Parliament. The amendments will come into force when the accompanying regulations have been published (probably sometime early in 2005).

The EDO was not consulted in relation to these particular amendments despite having indicated its concerns formally during the various government reviews of the workings of the project approvals systems. We are concerned about the potential impact of many of the amendments in the *Mining Amendment Bill 2004*. Some of these were not mentioned in the Keating Review and include:

An end to public notification of mining proposals?

The Bill provides that new applications for mining leases will only be able to be made if they are accompanied by either:

- a mining proposal, or
- a significant mineralisation report and a statement indicating what mining operations are likely in the future. (Applications of this type can only be granted on the condition that some mining activities will not be permitted until a mining proposal has been lodged in the future.) These applications are not able to be referred to the EPA.

Those applications which are accompanied by a mining proposal will be subject to the same public notification provisions as currently. The public will therefore be able to lodge objections to mining on environmental grounds with the Mining Warden, and refer mining proposals to the EPA, in the same manner as currently. However, those applications which are only accompanied by a mineralisation report and statement of likely activities will not readily permit scrutiny of environmental consequences. The public are therefore not likely to have the necessary information to lodge environmental objections with the Mining Warden, and will in fact be prohibited from referring the matter to the EPA. Although the public can refer the proposal to the EPA when the mining proposal is lodged after the lease is granted, there is no provision in the Act for public notification of mining proposals lodged after the lease is granted, so there is no way the public can:

1) either find out about it;
2) object to the mining proposal; and/or
3) refer it to the EPA when the relevant information is actually available!

The EDO believes that the Regulations which are currently being drafted should provide procedures for public notification and objection to mining proposals lodged after a lease is granted.

The Amendment Bill provides that all new mining leases and exploration licences will be granted subject to a statutory condition that there can be no use of ground disturbing equipment on the land unless the work was dealt with in a mining proposal, or an environmental officer (or Minister) approves the works programme. A public notification and objection procedure should apply to works programmes in the same way as it does to mining proposals. If works programmes are not going to be subject to such procedures, it would be possible for many mining activities which affect the environment to be approved without any public scrutiny.

Warden's power to award costs against environmental objectors

Section 134 (2) of the Mining Act currently restricts the Mining Warden from awarding costs against objectors (including environmental objectors) unless they raise frivolous or vexatious issues – but this restriction was removed by the Amendment Act. This means that, unless the Regulations provide otherwise, objectors will risk having to pay the miner's legal costs unless the Mining Warden finds mining is completely unacceptable. It is, however, rare that the Mining Warden finds that mining is completely unacceptable - rather, the Warden usually finds that mining is unacceptable on some parts on the area applied for, or finds that mining should only proceed subject to certain environmental conditions – that this is an appreciable risk. As such findings are made after the Warden has had the benefit of hearing the objector's environmental evidence it appears unfair that the objector could now be ordered to pay miner's legal costs!

The risk of having to provide security for costs up front, (that is to say 'security' in the way of a bond or other form of guarantee for a sum that is indicated by the miner to be the potential legal costs the miner will incur in meeting the objector's case) will effectively preclude many ordinary citizens from taking up their rights to object to mining leases and be heard before the Warden.

Extension of licences

Exploration licences are currently granted for 5 years, with a possibility of 2 x 2 year extensions, then 1 year extensions if there are exceptional circumstances. The amendments propose to change this to a 5 year term with a possibility of a 5 year extension, then 2 year extensions in "prescribed circumstances". There is therefore a potential of exploration licences to be extended indefinitely. This is problematic, because if an area is found to have significant environmental value, it is unlikely to be declared a conservation reserve or otherwise protected if it is indefinitely subject to exploration. The EDO believes the Regulations should prescribe public notification and objection procedures for the grant of extensions. It is also considered that extension applications which affect the conservation estate and environmentally sensitive areas should also be referred to the relevant Minster and agencies.

Fees for viewing information

Fees may be required by the Regulations if people want to see or copy information about mining proposals. These fees should not be set so high that they in effect make relevant documents prohibitively expensive for environmental groups to obtain, but typically these fees are set up on a costs recovery

basis and the size of the miners' documents labour charges for photocopying and postage, mean that the charges are likely to be high. The EDO would prefer to see a flat fee apply in relation to ordinary citizens, with full cost recovery being able to be waived, and takes the view that the flat fee should be set at a low, level comparable to the FOI level (currently $35).

Reversion scheme

The Bill provides for a scheme to enable applicants for mining leases to withdraw their applications and "revert" to exploration licences. The details will be set out in a scheme to be published by the Governor. The EDO believes that the scheme should address (at least) the following:

- people who have objected to the mining lease application should be able to maintain their objection to the reversion application.
- new objections should be able to be made to the reversion as circumstances may have changed since the initial application was made.
- reversions which affect the conservation estate should be referred to the Minister for the Environment, the Department of Conservation and Land Management.
- given the recent recognition of the importance of environmentally sensitive areas outside the conservation area by way of the declaration of "environmentally sensitive areas" in the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, any reversion which may affect these areas should be referred to the Minister for the Environment and the Department of Environment.

If you are concerned about the potential impact of the amendments to the *Mining Act*, please contact the Minister and request that the Regulations ensure the potential problems do not arise.

PLANNING AND DEVELOPMENT BILL 2004

The planning consolidation legislation is wending its way through the Legislative Committee having completed its passage through the Lower House on 23 September 2004.

It is expected to be the last piece of legislation passed before Parliament is prorogued for the State elections.

Sadly, the two things the EDO championed in this legislation have now been deleted. Initially, there was going to be a limited third party appeal to the Town Planning Appeals Tribunal. It would have been limited because it would only arise where there was a use classification error (or jurisdictional error) in a decision at Council level. This has been deleted. Only an applicant may now appeal on this ground. (The note on the *Woolworths v Pallas Newco Pty Ltd* case on page 6 explains a use classification error.)

The EDO also sought better legislative support for State Planning Policies. Currently SPP's are a **relevant consideration** in all town planning appeals. The law needs to be strengthened. Many SPP's are not being followed.

STATE ENVIRONMENT POLICY

The first State Environmental Policy (concerning Cockburn Sound) was released by the Minister for Environment in draft for a six-week public consultation period, which closed on 3rd December 2004.

Unlike Environmental Protection Policies (EPP) which are formal, legally-drafted documents that have the force of law under Part III of the E*nvironmental Protection Act* 1986 *(EP Act)*, the State Environmental Policy is policy under section 17(3) and does not have the force of law, although existing Part V powers will be drawn upon for its enforcement.

An SEP does not confer the power to bind others, although it may bind the government agency responsible for achieving any targets it sets provided it sets sufficiently certain targets.

The SEP started its life as a draft EPP. When the Department of Environment approached the State Solicitor's Office for legal advice about how to convert the draft Cockburn Sound EPP into law, it was advised that was not possible. The reason given is that upper limits on water quality are difficult for science to define due to the diffuse nature of contaminants.

A compromise was reached, which resulted in the State Environmental (Cockburn Sound) Policy.

NEW DEFAMATION LAWS?

The state and territory governments reached agreement on model defamation laws across Australia, after State and Territory Attorney-Generals met recently in New Zealand.

The legislation would reform the current laws by ensuring truth is a stand-alone defence. The new laws would also ban defamation cases against dead people and remove the right of corporations to sue individuals. Defamation damages would be capped and speedy settlements encouraged.

It is hoped the model laws will stop forum-shopping where people pick and choose which state they will take legal action in. The Federal Government had proposed to bring in uniform national laws if the states could not agree. However one commentator noted that "One of the aspects in the Federal draft bill that caused us immense concern is the proposal to enable dead people to be able to sue".

"That would be an enormously retrograde step and it's very valuable that the States, in their proposal are preventing that applying on a national basis."

The West Australian Law Society says the uniform code will make the law clearer. The new code is consistent with the recommendations made by WA's defamation law reform committee.

WA will introduce legislation to Parliament in March 2005. The Commonwealth Attorney General's Office has indicated its intention to have the uniform defamation laws come into force on 1st January 2006.

ANEDO
Australian Network of
Environmental Defender's Offices

EDO SA

WHYALLA RED DUST ACTION GROUP v ONESTEEL MANUFACTURING PTY LTD

The Whyalla Red Dust Action Group Incorporated (WRDAG) has commenced legal action against OneSteel Manufacturing Pty Ltd (OneSteel) in the South Australian Environment Resources & Development Court (ERD Court). These proceedings relate to alleged environmental harm and environmental nuisance resulting from dust pollution from the Whyalla Steelworks. WRDAG is legally represented in this action by the Environmental Defenders Office (SA) Inc. (EDO).

As part of its claim, the WRDAG has sought compensation on behalf of un-named persons who have suffered "injury or loss or damage to property, including property maintenance or cleaning costs and health costs incurred as a result of dust pollution caused by the OneSteel Steelworks …"

Some of the types of loss identified by WRDAG include dust-related damage to:

- outside surfaces of houses and premises, for example staining of roof or walls
- vehicles and electrical equipment
- inside of house or premises such as painted surfaces
- personal possessions such as soft furnishings, carpets
- health costs such as hospitalisation, doctors visits and lost work time

In relation to property damage, this may include the replacement of items, cleaning costs, cleaning time and increased frequency of cleaning or painting.

EDO NSW Stop Press

***Woolworths v Pallas Newco Pty Ltd* [2004] NSWCA 422 is an important new case on jurisdictional error from the NSW Court of Appeal.**

Initially heard by a bench of 3, on 19 November 2004, the NSW Court of Appeal, with a bench of 5, upheld the original decision that characterisation of a development is a jurisdictional fact which must be determined by the Court *de novo.* In WA, a use classification error (such as calling a quarry 'General Industry' when there is an 'Extractive Industry' use classification available in the district scheme), is considered to be a matter from which no appeal to the Planning Tribunal can be made.

This decision suggests that an appeal will always be available if a use classification error is made. *A copy of this case can be obtained from Leigh Simpkin, of the EDO.*

GREENHOUSE GAS EMISSIONS MUST BE CONSIDERED IN ASSESSING COAL MINE EXPANSION

Barnaby McIlrath and Su Robertson EDO (Vic)

In one of the first decisions of its kind, the Victorian Civil and Administrative Tribunal ('VCAT') has ordered that the panel considering submissions in relation to the Hazelwood West Field Project cannot exclude submissions about the greenhouse gas implications of using brown coal.

International Power Hazelwood wants to use a new coal deposit to supply Hazelwood Power Station beyond 2009, when the current coal deposits will be exhausted. The Environment Defenders Office (Vic), generously assisted by pro bono barristers Mark Dreyfus QC and Marita Foley, represented four environment groups – WWF Australia, Environment Victoria, The Climate Action Network Australia, and the Australian Conservation Foundation.

According to VCAT, the Victorian Minister for Planning does not have the power to direct the panel to exclude considerations about greenhouse gas impacts. VCAT also said that greenhouse gas considerations are relevant considerations to a proposed planning scheme amendment which would facilitate mining of coal for use in the power station.

Justice Morris confirmed that the *Planning & Environment Act* 1987 seeks to achieve ecologically sustainable development:

"Many would accept that, in present circumstances, the use of energy that results in the generation of some greenhouse gases is in the present interests of Victorians; but at what cost to the future interest of Victorians? Further the generation of greenhouse gases from a brown coal power station clearly has the potential to give rise to "significant" environmental effects."

This decision is important because it sets the scene for a more integrated approach to environmental impact assessments at both State and Federal level. In his decision, Justice Morris clearly acknowledged the similarity of the environmental impact assessment approaches required under both the Commonwealth *Environment Protection and Biodiversity Conservation Act* 1999 (Cth) and the Victorian *Planning & Environment Act.*

This decision also reinforces that the environmental goals and processes built into the Victorian Planning system are all about robust, independent assessment of environmental impacts. It also clearly underscores the legal right of community members to have a say about how their environment is treated by the planning system.

For further information about this case contact EDO (Vic) on (03) 9328-4811

EDO NSW

WHALING CASE BROUGHT BY HSI

On Tuesday, 16 November 2004, following a Federal Court hearing in Sydney, Mr Justice James Allsop reserved his judgment on whether the Humane Society International (HSI) has leave to serve legal proceedings on Kyodo Senpaku Kaisha Ltd (Kyodo), a Japanese whaling company, for killing whales within Australia's Whale Sanctuary adjacent to Antarctica.

HSI has obtained evidence from the International Whaling Commission which shows that Kyodo has killed over 400 minke whales in the Australian Whale Sanctuary as part of Japan's notorious "scientific" whaling program. A decision on the issue of leave to serve the proceedings in Japan is expected within a couple of weeks.

Last weekend, five whaling ships from the company departed Shimonseki in Japan headed for Antarctica where they plan to kill 440 minke whales as part of the annual summer hunt. Every summer a proportion of the whales killed in the Southern Ocean are within the Australian Whale Sanctuary. All the whale meat will be sold commercially in Japan.

The Environmental Defender's Office (NSW) Ltd is acting for HSI in this case, and has briefed barristers Chris McGrath and Stephen Gageler SC.

THIS BULLDOZER CANNOT BE STOPPED BY COURT ACTION

The Spring 2004 edition of 'THE WEB' - newsletter of the Threatened Species Network program of NHT and WWF - announced the release of a new publication looking at die-back.

The biological bulldozer (as it is called) is a microscopic organism known as *phytophthora cinnamomi* which gets into the root system and stems of plants, destroying their ability to take up water and nurtrients. Death follows. It is estimated that 40% of the 5,700 described plant species in South West WA are susceptible to dieback. Of course, as the plant species die, so the loss of habitat puts at great risk the survival of native animals. For more information about *phytophthora cinnamomi* and its threats, visit the website at **www.wwf.org.au** or **email publications@wwf.org.au.**

The Environmental Protection Authority has released a position statement on Environmental Protection of Wetlands. The Statement gives a summary of aspects regarding environmental protection of wetlands in Western Australia, that the EPA considers to be important in guiding its decisions and advice to government on matters of environmental protection. For the complete statement go to: http://www.epa.wa.gov.au and click on Position Statements.

NETWORK CITY
(from the folk who brought you 'Dialogue with the city'…)

The EDO participated in Dialogue in the City last year which was a consultation initiative of the Department of Planning and Infrastructure (DPI) aimed at getting ordinary people engaged with the long-term planning strategy for Perth's development. As the DPI's website explains:

"Faced with a population that will grow by over fifty per cent in the next 25 years, requiring an additional 375,000 homes and 350,000 new jobs, the State Government invited local government, industry and the community to come together for Dialogue in the City *- where stakeholders were asked what sort of city they wanted in 2030 and how this vision could be achieved."*

"*It has involved an attitudinal survey sent to 8 000 residents; a series of issues papers published on the web and reported on in The West Australian; an hour program on Channel 7 about the future scenarios for the city; an interactive website; a school's competition to involve young people; listening sessions with youth, Indigenous and non-English speaking people; and radio spots with various experts."*

On 7 September 2004, the State Government launched the next step in the process which is a draft document called *Network city: community planning strategy for Perth and Peel*, and which contains key findings and directions for planning in Perth and Peel over the next 30 years. The draft 30-year strategy will now undergo a further three month community consultation and feedback phase. You can obtain from the Western Australian Planning Commission website or request a copy by email from **networkcity@dpi.wa.gov.au** or phone 1300 735 560. The strategy is available in CD or hard copy format.

Your chance to participate

The great thing about this process is that the concept of participatory planning is being actively embraced by the State agencies. Too often State agencies pay lip service to participatory democracy. Now if we could only get third party appeal rights in the Planning Tribunal to take us to the next stage!

The public comment period for *Network city: community planning strategy for Perth and Peel* is now open. It will not close at the original advertised date of 5pm on Tuesday, December 7, 2004 but has been extended until 5pm on 31 January 2005.

Submissions to:

Network City administration
Western Australian Planning Commission
Albert Facey House
469 Wellington Street
Perth WA 6000

FAREWELL TO KIRSTINE FORESTIER

With the close of the Natural Resources Management Project in late November, we said goodbye to Kirstine Forestier. Kirstine commenced work at the EDO as the NRM Project Solicitor in August 2003. We thank Kirstine for her hard work and wish her well in her future employment.

A brief summary of Kirstine's 15 months at the EDO follows and her final report is on page nine:

1. August 2003, 'Introduction to NRM project', to South Coast Regional Initiative Planning Team members in Albany and Denmark;
2. September 2003, 'Introduction to NRM project', 'State Administrative Appeals Tribunal', 'Protecting Wetlands' and individual legal advice, to a range of NRM group members from throughout the State at Katanning, after the State Landcare Conference;
3. October 2003, 'Introduction to NRM project' stall and informal advice at Dowerin Field Day;
4. December 2003, 'NRM Plans and Environmental Law', Dryandra forum for Landcare facilitators, and Commonwealth NRM facilitators and others;
5. February 2004, 'Roundtable discussion forum on NRM law reform', Perth, for all NRM groups, government agency staff, policy officers;
6. May 2004, 'NRM Groups Legal discussion forum' offered, Perth (at EDO Office);
7. June 04, 'Marine law', legal education session offered, Perth (at EDO Office);
8. July 2004, 'Introduction to environmental law', for South West Catchments Council sub-regional group Peel Harvey Catchments Council at Mundijong;
9. July 2004, 'Legal Aspects of NRM & *Environmental Protection Act* 1986', for Northern Agricultural Catchments Council at Moora;
10. August 2004, 'Conservation Covenants' for Northern Agricultural Catchments Council West-Midlands sub-regional NRM group scheduled at Dandaragan;
11. September 2004, project solicitor participated in 'NRM groups Biodiversity Workshop' inputting legal content,
12. October 2004, 'Introduction to Environmental law and NRM Planning', for Rangelands NRM Coordinating Kimberley sub-regional group, at Kununurra;
13. October 2004, 'Introduction to Environmental law and NRM Planning', for Rangelands NRM Coordinating Pilbara sub-regional group, at Karratha.

OUTREACH TO RURAL, REMOTE AND REGIONAL AREAS/ WATER PROJECT

by Rick Fletcher

The Outreach visits program has been placed on hold temporarily as a result of the workload associated with the Coogee Coastal Action Coalition litigation. However, Marilyn Ashton received some extremely positive feedback from the rural, regional and remote community legal centres at the recent Western Australian Association of Community Legal Centres conference and it will certainly be a priority in the New Year.

On 10 November 2004, I attended the first meeting of the Minister for the Environment's Water Resources Stakeholder Reference Group. The objective of the group is to provide policy advice on strategic issues relating to water usage and water law reform and to provide an effective means of distributing information to stakeholders direct from the Government rather than replicating the work already being done by other regional stakeholder groups and forums. It is expected that a range of views will be presented to the Minister on different issues, which is advantageous given the diversity of industry, government and conservation interests represented in the group. The next meeting of the Stakeholder Reference Group is scheduled for February or March 2005.

Planning for next year's major EDO conference on water law is progressing apace. The working title of the conference is Sustainable Freshwater Resources: A New Way Forward. The conference venue and dates should be advertised on the EDO website soon.

NRM PROJECT FINAL REPORT

by Kirstine Forestier

Kununurra and Karratha sub-regional NRM groups invited, and Rangelands NRM Coordinating Group Inc paid for, the NRM solicitor to give legal education sessions on site in November 2004. The legal education sessions introduced basic legal concepts, gave an overview of environment law, and then facilitated group discussions about issues of specific relevance regionally.

In Karratha one of the issues explored was possible legal options to conserve sacred rock art at the Burrup Pennisular. The Burrup region of WA contains a major body of Aboriginal rock art of world significance. The Petroglyphs or engravings have been made on exposed rock surfaces over thousands of years. It also possesses a major corpus of standing stones. According to locals this art is currently being destroyed, presumably lawfully, by mining companies in the region with the State government's approval.

This controversial topic generated some passionate debate involving several participants which had historical and cultural links to the area. The group considered the new environmental harm provisions (*Environmental Protection Act* 1986) in the context of this example, and decided these were unlikely to apply due to the State's support for developments on the Burrup, and prior approvals. The NRM solicitor was taken to the site and witnessed some of the rock art in question, as well as the incongruous construction of large cylindrical structures, as part of an industrial estate being built on the peninsular.

In Kununurra, participants considered the possible legal ramifications of a hypothetical example should a developer gain approval to dam a tributary of the Fitzroy River for the purposes of growing cotton.

The Fitzroy River, which when in flood is one of the largest rivers in the world, rises in the Leopold and Mueller Ranges, the major tributaries being, to the north-east and east, the Leopold, Margaret, Mary, Louisa and the O'Donnell, to the south, Christmas Creek, to the north and north-west, the Barnett, Hann, Trainor and Adock Rivers. It looks spectacular from the air, even through smoke haze from arson-related fires. The Fitzroy flows through rugged hills and plains for a distance of 750 kilometers, of which half is above Fitzroy Crossing. Record floods occurred in 1983, 1986, and 2002.

Indigenous participants at the Kununurra workshop particularly from the Broome, 'Saltwater people', raised many points about protecting the river systems, and the marine environment, from dams, oil spills, over fishing, to contamination by organisms from other waters. They also highlighted the ways in which native title interests, and traditional knowledge of and approaches to, 'the environment' have still not been accommodated or included in the English legal system we have inherited. Their participation in the legal education workshop gave the entire group the opportunity of developing greater cross-cultural awareness in the context of natural resource management law.

The Kimberley and Pilbara sub-regional NRM groups identified a number of legal issues relating to natural resource management in the North on which future legal education workshops could focus, including: pastoral lease renewal, access to pastoral lands, fire management (an extremely important issue for the North), vegetation management, fishing quotas (commercial and recreational), greenhouse and carbon rights, air-quality, and weed management. Initial concepts about law applying to these topics were explored and discussed. However, the North is fertile ground for the GMO-free cross-pollination of ideas.

Participants in the Karratha Workshop

Participants in the Kununurra Workshop

Carnaby's Cockatoo, aka the white-tailed black cockatoo or short-billed black cockatoo, is on the 'Declared Threatened Fauna': Schedule 1- fauna that is rare or is likely to become extinct.

Wide scale clearing in the wheatbelt contributes to its decline. Its breeding habitat includes Lake Cronin. The Wilderness Society recently requested the Appeals Convenor to consider the level of assessment for a nickel mining proposal in the Lake Cronin area. Although the level of assessment will not be changed, the Minister considers that provided the mine is implemented in accordance with certain environmental undertakings and conditions (which took notice of The Wilderness Society's concerns), Lake Cronin and its wide variety of flora and fauna should not be significantly impacted. For further information: go to http://www.charles.roche@wilderness.org.au or http://www.wilderness.org.au

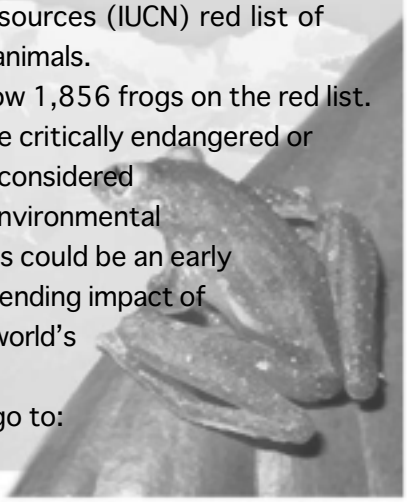
NINGALOO

Professor Terry Hughes, the world's most widely cited coral reef biologist, has warned that without serious protection from overfishing, Western Australia's coral reefs - including Ningaloo - could be in jeopardy. He considers that at least 34% of Ningaloo Reef be closed to fishing. The government's decision to follow this advice was recently announced. For further information, contact: Paul Gamblin at WWF.

"The challenge now is to mobilise governments, businesses and citizens to shift their focus away from the unrestrained accumulation of goods, and towards finding ways to ensure a better life for all"

Worldwatch Institute
"State of the World 2004" report

This year, eleven Australian frog species have been added to the International Union for Conservation of Nature and Natural Resources (IUCN) red list of threatened plants and animals.
Worldwide there are now 1,856 frogs on the red list. Twenty one percent are critically endangered or endangered. Frogs are considered a key bio-indicator of environmental health. Declines in frogs could be an early warning sign of the impending impact of climate change on the world's biodiversity.
For more information, go to: www.wwf.org.au



WINE OFFER FOR CHRISTMAS

Human Rights WA is selling Do Gooder White and Bleeding Hearts Red at poverty-stricken prices.

Do Gooder White is a limited edition with a bad name but is a damned good drop. Serve with copious amounts of Christmas pudding, Christmas cake and headache tablets.

Bleeding Hearts Red is from agonisingly hand-wrung grapes which have been driven to despair and is often overlooked. It is quite often chained to a fence to gain recognition.

Both varieties are $10 per bottle or $110 per dozen.

To order call Human Rights WA on 9471 1199 and pick up at 669 Beaufort Street, Inglewood.

Email an order to: hrwa@humanrightswa.org.au

The EDO thanks the owners of **Settlers Ridge Organic Wines,** Wayne and Kay Nobbs, for their recent generous donation of wines.

We highly recommend them.

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Wine tasting:
54B Bussell Highway, Cowaramup.

Email
wine@settlersridge.com.au
Website
www.settlersridge.com.au

ANNUAL GENERAL MEETING 2004

The Annual General Meeting was held at the EDO Office on the 19th of October. Dr Hannes Schoombee presented the 2003/2004 annual report highlighting the performance of staff over the past year, with special recognition of the NRM and EMS Projects and work undertaken by Kirstine Forestier and Vivian Markovich respectively. Dr Schoombee thanked Leigh Simpkin for her hard work as the EDO WA's third Principal Solicitor and noted the dedication of the Management Committee thanking each of them for their continuing support of the EDO WA. Dr Beth Schultz addressed the meeting on the origins of the EDO, painting a picture of the difficulties facing environmentalists before the EDO.

2004/2005 MANAGEMENT COMMITTEE

Dr Hannes Schoombee, Convenor

Andrew Roberts, Deputy Convenor

Janice Dudley, Secretary

Cameron Poustie, Treasurer

Harriet Ketley, Committee Member

Angas Hopkins, Committee Member

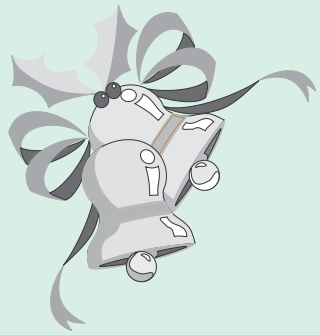
David Garnsworthy, Committee Member

Jay Anderson, Committee Member

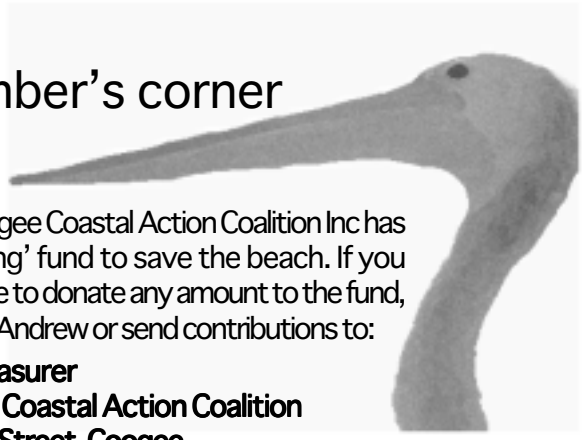
Chris Bailey, Committee Member

Nina Moncrief, Nic Dunlop and James Duggie resigned from the Management Committee. Staff and Members of the EDO thank them for their dedication over the last 12 months.

EDO Management Committee and staff wish all members and supporters a safe, happy and peaceful Christmas and New Year season.



Member's corner



The Coogee Coastal Action Coalition Inc has a 'fighting' fund to save the beach. If you would like to donate any amount to the fund, contact Andrew or send contributions to:

The Treasurer
Coogee Coastal Action Coalition
16 King Street, Coogee.

Donors

We are grateful to the following donors for their generous cash donations over the period September to Novmeber 2004:

Michael Reeves, Craig Chappelle, Barbara and Bert Main, Sue Ellery MLC, Brian and Zona Richards, John Smart, Hazelmere Progress Association, David Munut, Tom Hoyer, Peter Murphy, John Beattie, Kim Stanton, John Kolo, Graeme Morgan, Chris Tallentire, Leon Hill.

Volunteers

We thank the following law students and graduates who have worked as legal researchers at the EDO recently:

Chris Bailey, Lucy Hopkins, Hanouska Marmarac, Golnar Nabizadeh, Katie Riseborough, Chelsea Drowley and Heidi Nore

Donors-in-kind

We extend our sincere thanks to the following people who donated their expertise and time to the EDO:

Dr Hannes Schoombee, Greg McIntyre SC, Hylton Quail, Peter Rattigan, Steve Walker, Rangelands NRM Coordinating Group, Peta Blight, Lousie White, Holly Simpkin, JP Clement, James Duggie, David Lloyd, Ron and Gaye Hodgson, Katrina Strong and Suzanne Fielding.

CHRISTMAS CLOSING

The EDO will be closed from 1pm Friday 24th December 2004 until 9am Monday 10th January 2005.

The EDO thanks all our sponsors for their support

Core funding for the EDO WA (Inc) is provided by the State and Commonwealth Attorney-General Departments

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MEMBERSHIP FEES:

$15 Unwaged or concession

$40 Waged or household

$40 Non-profit organisation

$65 Corporate

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* Please note: memberships are subject to approval by the EDO Management Committee. Members must agree to abide by the EDO's Rules.