



Supreme Court deals major blow to James Price Point gas project

Patrick Pearlman, Principal Solicitor

Readers of *EDO News* will be very familiar with Premier Barnett's centrepiece for industrial and energy development in the West Kimberley – a \$45 billion liquefied natural gas (LNG) mega-facility on an ecologically and culturally important site at James Price Point, 52km north of Broome (see *EDO News* March and July 2013). The LNG project contemplated processing approximately 50 million tonnes per annum of natural gas produced from the Browse Basin, located off the northwest coast of WA, and export of the LNG to markets in Asia. The WA Environmental Protection Authority (EPA) issued its assessment report (recommending approval together with conditions of approval) for the LNG precinct “strategic proposal” in July 2012 after a four-year assessment process, and on 19 November 2012 the Environment Minister issued a statement that the strategic proposal could be implemented.

In addition, the EPA determined on 17 December 2012 that Woodside Energy Ltd’s proposal to build and operate an LNG processing and export facility on the southern half of the site was “derived” from the LNG Precinct strategic proposal and required no further environmental impact assessment.

In December 2012 the Wilderness Society WA Inc and Goolarabooloo law boss Richard Hunter sought review of the State decisions in the WA Supreme Court. EDOWA’s Principal Solicitor, Patrick Pearlman, acted as junior counsel on the legal team representing TWS and Mr Hunter, which was led by barrister Johannes Schoombee, with Simon Millman of Slater & Gordon acting as instructing solicitor.

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James Price Point. Source: Ingetje Tadro.

Federal election 2013: what the LNP’s win means for the environment

Ticha Mazhawidza, EDO volunteer, and Patrick Pearlman, Principal Solicitor

As predicted, the Liberal National Party (LNP) swept back into power in the latest federal election. While races are still too close to call in five electorates (two in NSW, one in Qld and two in Vic), the LNP currently holds 90 seats in the House of Representatives while the Australian Labor Party (ALP) holds 55. Meanwhile, the Greens, Katter Australia Party, and Palmer United Party each hold one seat. Two independents also hold seats.

The LNP's ability to push through its agenda may run into a roadblock in the Senate, however, where the picture is considerably murkier. According to the ABC's latest tally, the LNP holds 34 Senate seats, the ALP 25, the Greens 10, the Democratic Labour Party 1, and “others” six. The “others” are likely to be a source of consternation for both the government and the opposition, as their political objectives and orientation are not terribly clear. For example, the Liberal Democratic Party holds a Senate seat for NSW, a Palmer United Party Senator holds a seat from Queensland, South Australia has one seat held by the Nick Xenophon Group and another by Family First, while Victoria has a Senator from the Australian Motoring Enthusiasts Party, and WA has a Senator from the Australian Sports Party. Of these “others”, the Liberal Democratic Party's website indicates that its focus is on small government and individual freedom, while the Democratic Labour Party promotes itself as advocating the rights of workers without being dictated to by unions.

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Senate report questions the effectiveness of federal laws protecting threatened species

Nicki Guard, EDOWA volunteer

In a report released on 7 August, the Senate Environment and Communications References Committee (Committee) published its findings into the effectiveness of federal laws for protecting threatened species and ecological communities. The Committee report focuses on the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and its processes, highlighting important shortcomings in the current regulatory system and offering 44 recommendations to address those flaws.

The EPBC Act is the Commonwealth's primary environmental law and, among other things, aims to protect threatened species and ecological communities, which are among the nine matters of national environmental significance (MNES) subject to Commonwealth authority. The EPBC Act seeks to protect Australia's native species by providing for the identification and listing of species and communities as threatened, recognising key threatening processes, and facilitating the development of conservation advice, recovery plans and abatement plans.

The Committee heard a range of concerns about aspects of the process for listing threatened species and ecological communities such as: lengthy delays between nomination and listing of species; the inaccuracy of the list and lack of its regular review; and the duplication and inconsistency between the EPBC Act lists and state/territory lists of threatened species and communities. Specific recommendations aimed at addressing these flaws include the implementation of "emergency" listing provisions, harmonisation of lists across jurisdictions, the need for increased surveys, monitoring, and federally-funded research.

More specifically, the Committee expressed concern over the slow development of recovery plans, the absence of recovery plans for some species, and insufficient funding for (and lack of) effective implementation of recovery plans. A recovery plan is designed to encourage research and management actions to stop the decline of, and support the recovery of, the listed threatened species. However, amendments to the EPBC Act in 2006 made it no longer compulsory for the Environment Minister to make recovery plans. To address this shortcoming, the Committee endorsed a more strategic approach to recovery planning, advocating – among other things – the development of multi-species and regional recovery plans where appropriate to deal with common issues affecting multiple threatened species. The Committee also recommended that action plans be developed with regard to the likelihood of available funds and in a manner that allows for the potential prioritisation of actions with key performance indicators against which funding is directed.

The Committee also noted that, while the EPBC Act provides for the maintenance of a register of "critical habitat", legislative provisions to list critical habitat have been under-utilised in those jurisdictions that have such provisions and therefore ineffective. The Committee

recommended discontinuing the register of critical habitat and instead advocates that the description and location of critical habitat be identified at the time of listing for each threatened species or community.

Likewise, the Committee found the process for listing key threatening processes – those that threaten the survival, abundance or evolutionary development of a native species – to be ineffective, lacking in transparency and too slow. Under the EPBC Act, once a threatening process is listed, a threat abatement plan can be put into place if it is shown to be 'a feasible, effective and efficient way' to abate the threatening process. The Committee observed that addressing threatening processes should be a very high priority in Australia because a limited number of significant threats interact and drive a whole range of species to extinction. The Committee noted that the slow development of threat abatement plans and the lack of funding to implement them is a major flaw in the regulatory system. The Committee suggested that use be made of EPBC Act s301A to regulate trade in certain "controlled species" (eg, invasive plant species) within Australia and recommended specific research strategies and institutions to develop biological controls for feral cats and other high-impact invasive species.

With regard to longer-term funding and biodiversity monitoring and reporting, the Committee recommended that this be considered when establishing targeted funding streams. Dedicated funding, the Committee suggested, should include funding for implementation of specific actions within recovery plans, conservation advices and threat abatement plans and advices. To that end the Committee recommended a review of all threat abatement plans older than five years, to ensure that they are deliverable, measurable and achievable. The Committee further suggested that, when funding relevant projects, initial baselines must be established against which success and progress can be measured and benchmarked, allowing successful projects to be identified for continued funding. Finally, the Committee endorsed the Australian Law Reform Commission undertaking a full review of threatened species laws in all jurisdictions to ensure consistency and remove bureaucratic obstacles.

To sum up, there are 1790 listed species in Australia today – nearly the same the number as 20 years ago. Our lack of progress in whittling down the list suggests that biodiversity conservation efforts have failed. The threatened species laws in all jurisdictions need to be strengthened and fully resourced, as no state or territory has a good track record of adequately resourcing or effectively implementing and enforcing their threatened-species laws. The Committee's report makes it clear that what's needed is not more strategies but rather measuring our environmental assets properly, and providing adequate resources and action to implement those strategies.

The Committee's full report is available at www.aph.gov.au/parliamentary_business/committees/senate_committees?url=ec_ctte/completed_inquiries/2010-13/threatened_species/report/index.htm ■

Does the rabbit-proof fence still make sense?

Emily Austin, EDOWA volunteer

The security of Australian farmers' crops and animals has often been a central focus of government policy. That was true at Federation, and remains true today. Today, the WA Department of Agriculture and Food supports extending the 1170km State Barrier Fence (SBF), commonly known as the "Rabbit-proof fence", from its most southerly point at Jerdacuttup another 500-730km (depending on which option is built) to a point east of Esperance, making the barrier largely continuous.

According to the Department's 2012 study, the fence consists mainly of a fabricated netting at least 1.35m high, with an angled skirt intended to allow through-movement of native fauna while excluding emus, dingoes and feral dogs, which are the fauna of concern. The SBF extension would also contain a number of gates so that there is no length of fence greater than 10km without vehicle access.

Construction of the original SBF was completed in 1901, with the goal that it would act as a physical barrier to protect WA's agricultural resources from rabbits. Having failed in that purpose the SBF was left standing, primarily serving to exclude emus.

Among others The Wilderness Society, Gondwana Link and Pew Environment Group are gravely concerned for the welfare of native flora and fauna if the SBF extension is constructed. Their concerns include issues such as fragmentation of species and ecosystems, habitat destruction, animal welfare, biodiversity impacts flowing from the removal of natural predators, and effects on flora – particularly seed dispersal by emus and other species.

Species fragmentation

According to Gondwana Link director Keith Bradby, building a barrier fence treats native wildlife as "vermin". As Mr Bradby points out, 'The southward movement of tens of thousands of emus in certain seasons is one of Australia's greatest examples of wildlife migration, yet the fence is specifically designed to cut off these movements.' Mr Bradby adds: '[It is] important that native animals are able to move across the landscape, given the rapid advance of climate change,' noting that animals must be allowed to move within their habitats, to follow their supplies of food and water.



Left: Emus mass beside the State Barrier Fence on a southern migration. Source: WA Department of Agriculture and Food.

Right: Emus stopped by the fence often die from thirst or starvation. Source: Graeme Chapman (The Conversation).

Emus are not the only species of native wildlife likely to be affected by the SBF extension, which is likely to also interrupt movement patterns of many other species of Australia's native wildlife, including black-gloved wallabies, kangaroos and echidnas.

Habitat destruction

The SBF upgrades and extension, as originally proposed, would run through five bioregions, from north of Geraldton to Cape Arid. The extensions would be located in the centre of a 20m wide cleared area and, depending on the route chosen, require the clearing of between 1000ha and 1460 hectares of woodland, mallee and heath, and habitat of a number of species listed as endangered under the Commonwealth EPBC Act. This probably understates the extent of impacts associated with the SBF extension. According to Gondwana Link's website, thousands of hectares of additional bushland would also become degraded as a result of regular scrub-rolling and burning to buffer the fence.

Animal welfare

According to environmental groups, emus have massed in their thousands along the SBF in the past but, when prevented from moving across the barrier have died from starvation or been shot en masse. Similarly, kangaroos regularly become entangled, and die slowly as they hang trapped in the barrier. The SBF generally, and in particular the proposal to extend and upgrade it, thus raises significant animal welfare issues which need to be addressed.

Removal of predators

The proposed SBF extension also ignores the importance of dingoes and wild dogs to healthy ecological function. According to dingo expert and 2013 Eureka Award winner Dr Euan Ritchie, from Deakin University in Melbourne, keeping dingoes out could be counterproductive in the long term as it could lead to increased populations of dingo prey – such as kangaroos, rabbits, foxes, and cats – via removal of their major predator. By preying on these animals dingoes provide protection for small to medium-sized mammals such as numbats, woylies and dighters. Moreover, the proposed SBF extension would not only keep dingoes and wild dogs out of fenced-off areas but, along with increased baiting and trapping near the fence, may also impact dingo packs, further decreasing the extent to which dingoes reduce predation by feral dogs, foxes and cats.

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<< Rabbit-proof fence

Flora

The proposed SBF extension would likely also have significant adverse impacts on flora species in the affected bioregions. For one thing it would reduce or even eliminate important seed dispersal processes that many species of plant depend on. Emus are vitally important seed dispersers, carrying fruit and other seeds they have eaten from a range of different species (from 12 to 200) in their gut and travelling long distances before defecating the seeds in new locations. Significantly limiting emu movement will have negative impacts on native flora, as without their seed dispersal service, gene transfer would be slower, and isolated populations of flora would have no source of replenishment and could ultimately die out. Moreover, as these species of flora died out or shrink in range, species of fauna that depend on those plants would likely also be affected.

The proposed SBF extension would also separate the Great Western Woodlands, the largest intact temperate woodland in southern Australia, from the rest of southwestern Australia. The woodlands are home to 20% of Australia's known flora, including an impressive 3000 flowering plant species and some 160 species of eucalypts, as well as a diverse range of fauna.

EDOWA's and other organisations' efforts

Given the likely negative impacts of the proposed SBF extension on environmental resources protected by both State and Commonwealth legislation, and continuing issues in using such a barrier fence, it is vitally important that the costs and benefits of the proposal be closely examined, as well as alternative solutions investigated. Mechanisms addressing the humane and ethical treatment of animals that become trapped must also be considered. EDOWA has provided advice to Gondwana Link Ltd on several occasions that has assisted the organisation in its fight to have the SBF extension's environmental impacts

carefully scrutinised and, ultimately, limited or avoided altogether. Thus far, the Conservation Council of WA has used section 38 of the EPBC Act to formally refer the proposed SBF extension near Esperance for assessment under Part IV of that legislation, and has notified the Commonwealth government that the proposal is likely to have a significant impact on matters of national environmental significance protected under the EPBC Act. EDOWA understands that the WA government is now preparing to have the proposed SBF extension undergo formal environmental assessment, and has changed some aspects of the proposal regarding route, end-point and river crossings, in order to reduce environmental impacts. However, large-scale issues of ecological connectivity are not being addressed, and may not be resolved if the fence extension proceeds. ■

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EDOWA seeks funding for West Kimberley project

Patrick Pearlman, Principal Solicitor

At the end of July EDOWA lodged an application seeking a one-year grant of \$65,000 from the Public Purpose Trust (PPT) for the 2014-15 financial year, to expand its community legal services into the West Kimberley.

The PPT is a trust fund that has two sources of income: interest paid by banks on legal practitioners' client trust accounts; and interest on the Trust's investments. The PPT is administered by the Law Society of Western Australia, which provides funding for proposals that advance one or more of three objectives:

- Advance the education of the community and any section of it with respect to the law;
- Advance the collection, assessment and dissemination to the community and any section of it, of information relating to the law; and
- Improve the access of the community and any section of it to legal services.

EDOWA's West Kimberley project grant proposal consists of three elements, all of which are designed to advance each of the PPT's three objectives and expand the provision of public interest environmental law services in the West Kimberley region. First, EDOWA proposes to increase its legal staff by adding at least one 0.6 FTE West Kimberley-focused solicitor to its existing staff. This solicitor would either be based in the West Kimberley – presumably in Broome – or in Perth, but travel no less than quarterly, for a week or more, to temporary offices in West Kimberley.

Adding a West Kimberley-focused solicitor to EDOWA's legal staff would enable our office to increase the number of community legal education (CLE) presentations to West Kimberley residents to 3-6 per year, and provide greater levels of legal advice, assistance and representation to indigenous and other communities in this remote region of WA.

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<< EDOWA seeks W Kimberley funding

It would also enable the development and distribution of a register of subject-matter experts – geologists, anthropologists, zoologists, etc – willing and able to assist the public on environmental protection-related matters.

There is a crying need for an expansion of EDOWA's public interest environmental law services in the West Kimberley, which is home to many of the State's indigenous peoples, a wealth of unique flora and fauna, and sites of tremendous cultural significance – the outstanding value of which was recognised on 31 August 2011, when the Commonwealth placed the region on the National Heritage List.

The West Kimberley is also where some of the State's largest mineral deposits – including coal, natural gas, petroleum and uranium – are located. Most of the region is already subject to some form of mineral tenement, though at this stage many are just exploration permits. As most EDO News readers know, much of the West Kimberley is within the Canning Basin, a geologic formation rich in mineral reserves – including estimates of up to 229 trillion cubic feet of natural gas, hundreds of billions of litres of petroleum, potentially hundreds of millions of tonnes of coal, as well as uranium and other, "hard rock" mineral deposits such as zinc and iron.

Finally, communities and citizens in the West Kimberley are among the most remote, most disadvantaged populations in Australia when it comes to accessing legal services. The region is obviously remote – Broome, for example, is 2238km from the seat of government in Perth. It is also sparsely populated, with only about 41,000 people spread across 423,500 square kilometres. Moreover, 33% of the region's population is indigenous.

Several West Kimberley groups provided letters to the Law Society supporting EDOWA's application - namely Environs Kimberley, Nykina Inc, and Mudjulla Inc (the latter two being indigenous organisations).

While the cost of fully implementing the West Kimberley Project proposal may exceed the \$65,000 applied for, a grant from the PPT for this level of funding will go a long way towards making expansion of EDOWA's legal services to this region a reality.

The Law Society has indicated that a final decision on the application is expected by late December. While the deadline for lodging grant applications has passed, if any EDOWA members or readers in the West Kimberley would like to register their support for our proposal with the Law Society, there's no harm in doing so. Letters supporting the proposal should be sent to: The Secretary, Public Purposes Trust, The Law Society of Western Australia, PO Box Z5345, Perth WA 6831. ■

other Got any fundraising ideas?

If you have ideas for EDOWA fundraising events please contact Jane Siddall at jsiddall@edowa.org.au or on 9221 3030 Monday, Tuesday or Thursday.

Thank you.

Stepping up Community Outreach

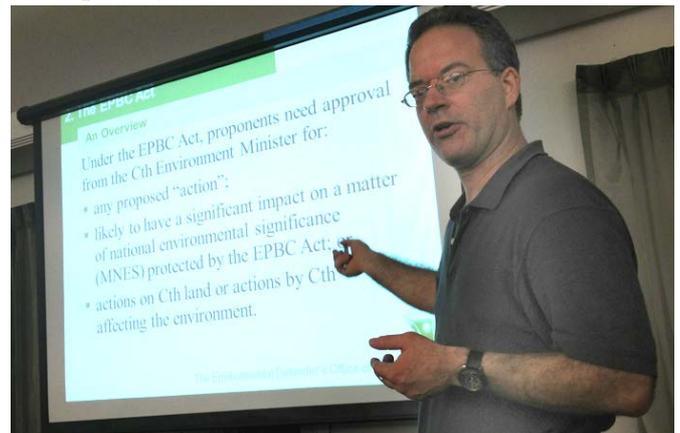
Jessica Smith, Outreach Solicitor

EDOWA solicitors and volunteers have been busy over the past three months delivering a number of rural and metropolitan community seminars on environmental law.

On 27 June Principal Solicitor Patrick Pearlman and Outreach Solicitor Jessica Smith travelled to Broome to present seminars – one on fracking (the technique used to extract coal seam gas and other types of unconventional gas from the ground) and one on the protection of a recently-listed endangered ecological community, monsoon vine thicket. The trip was a useful opportunity to meet with members of the local community and local environmental groups, and provide in-person legal advice through our legal advice clinics. Our solicitors were also fortunate enough to see some of the local environment – including dinosaur footprints, like those at the James Price Point gas hub.

In addition to delivering community legal education in Broome, EDOWA recently delivered some metropolitan environmental law seminars. In August EDOWA presented a half-day seminar on a range of environmental law topics for conservation groups at Parliament House, attended by more than 20 people. On 11 September Jessica gave an overview of environmental law at the WA Law Society's "Environmental Law Essentials" event.

The EDO's community legal education materials - including presentation handouts and Factsheets - are freely available on the EDO's website www.edowa.org.au EDOWA provides at least three rural, regional and remote environmental law seminars each year, and frequently presents seminars in the metropolitan area as well. If you would like us to give a presentation on an environmental law topic in your area, contact us on 9221 3030. ■



Top: In Broome, Patrick explains the EPBC Act, while above, Jessica explains the finer points of fracking.

New WA State Coastal Planning Policy: a sea change in WA?

Samantha Moran, EDOWA volunteer

WA's coastal and marine environment is spectacular and diverse, encompassing the land and coastal zone to three nautical miles offshore and boasting the longest coastline of any state in Australia – more than 20,780km. The coastline alternates between sandy beaches, granite headlands, limestone cliffs, vegetated coastal dunes, coastal wetlands and inlets and thousands of offshore islands, shoals and bombies. Coastal management refers to the use and protection of this vast area, which is made up of marine (saltwater) and estuarine (meeting point of fresh and saltwater) ecosystems. In a constant state of evolution, these areas are naturally affected by rainfall, wind, ocean currents, waves and tidal movements.

Our coastline holds great potential in terms of its use for commercial, recreational and residential purposes, while holding many social and cultural values for both indigenous and non-indigenous Australians alike. Sadly, coastal development over the past two centuries has greatly disrupted the ecological processes that underlie its intricate coastal ecosystems. Man's development and use of the coastline has impacted the coast's sensitive marine ecosystems through housing and development, ports and marinas, stormwater run-off and pollution, sand mining, and recreation and tourism. Those impacts are now likely to be exacerbated by rising sea levels that are predicted to occur in a changing global climate.

Sea level change

Sea levels are rising around the world, and Australia is no exception. Since the early 1990s the south coast of Western Australia has experienced sea level rises up to 4.6mm per year, and the west coast up to 7.4mm. Research suggests that a sea level rise of a metre or more during this century is likely – and may be a conservative estimate. A sea level rise of 1.1m in WA will put at risk between 20,000 and 30,000 residential buildings, currently worth an estimated \$5b-\$8b, and up to 9000km of roads, 114km of railways and 2100 commercial buildings. The current estimated value of these assets is up to \$11.3b, \$500m and \$17b respectively. In other words, some \$40b of infrastructure and property in WA alone is at risk of being lost over the next few decades.

In 2010 the WA Department of Transport's Coastal Infrastructure & Coastal Engineering Group reviewed the current information on global mean sea level changes, in order to provide recommendations on an appropriate allowance in WA coastal planning. Mean sea level change is one of the key environmental variables affected by climate change, along with ocean currents and temperature, wind climate, wave climate, rainfall/runoff and air temperature. The previous State Coastal Planning Policy, which incorporates mean sea level rise for determining coastal setbacks for new developments, was based on a 2001 study undertaken by the Intergovernmental Panel on Climate Change (IPCC), which corresponded to a predicted global sea level rise of 0.38m between 2000 and 2100.

The IPCC more than doubled that prediction in its next report in 2007, estimating a global sea level rise by 2100 of up to 0.8m. The report also noted the long-term estimates

of global sea level rise as up to 3.5m by 2200, and up to 5.1m by 2300. But that report intentionally omitted the possibility that ice sheets in Greenland and Antarctica might flow more rapidly into the sea, on the grounds that the physics of that process was poorly understood. Subsequent US research has observed accelerated melting of the ice sheets in Greenland and West Antarctica, noting that if this acceleration continues we could see a sea level rise of as much as 1.8m globally in the next 100 years, rather than 0.8m-1.1m. The IPCC is due to release updated estimates of the effects of climate change and mean sea level change by the end of 2013, which is expected to report even higher global sea level rise over the next 100 years.

State Coastal Planning Policy No 6

Using the 2010 Department of Transport study, the WA Department of Planning completed its review of the State Coastal Planning Policy, which was released on 30 July 2013. The 2013 *State Coastal Planning Policy No 2.6* (SPP 2.6) seeks to provide more robust guidance to the Western Australian Planning Commission (WAPC), State government bodies and local governments for landuse and development on or adjacent to the coast, for the long-term sustainability of WA's coastline. Interestingly, and presumably for policy reasons, the government chose to release SPP 2.6 ahead of the latest IPCC Assessment Report, choosing instead to base its policies on the soon-to-be outdated 2007 IPCC Assessment Report.

Even though it is based on what is likely to be outdated and rosier predictions of sea level rise, SPP 2.6 represents a significant improvement over the previous State coastal development policy, and includes new policy measures for water resources and management; coastal hazard risk management and adaptation planning; infill development; coastal protection works; and the implementation of the precautionary principle. It consists of modified policy measures for building height limits; coastal foreshore reserves; public interest; coastal strategies and management plans; and guidelines for determining physical processes impacts on the coastal types in Western Australia.

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Seaside Heights, New Jersey, USA after Hurricane Sandy.

Source: National Geographic

<< State coastal planning policy

The objectives of SPP 2.6 seek to ensure that

- the location of coastal facilities takes into account coastal processes, landform stability, coastal hazards, climate change and biophysical criteria;
- the identification of appropriate areas for the sustainable use of the coast for housing, tourism, recreation, ocean access, maritime industry, commercial and other activities;
- provide for public coastal foreshore reserves and access to them on the coast; and
- coastal zone values are protected, conserved and enhanced, particularly in areas of landscape, biodiversity and ecosystem integrity, and indigenous and cultural significance.

Speaking at the 2013 WA State Coastal Conference at Esperance, Planning Minister John Day said that balancing the impact of our growing population with the conservation of our coastal environment had never been more important. Mr Day stated that SPP 2.6 'strikes the right balance between ensuring access to the coast for leisure and recreational activities; managing the need for housing and commercial development to accommodate our growing population; and protecting our environment.'

Although SPP 2.6 promotes the importance of coastal conservation it actually provides more flexibility for coastal development in some instances. For example, SPP 2.6 enables building height limits to be defined in local planning schemes, rather than by the State coastal policy. Moreover, while SPP 2.6 purportedly will guide the width of foreshore reserves, to ensure that they accommodate changes to the coastline over time so that community recreational areas can be accommodated in the future, it remains based on outdated studies that provide a rosier assessment of sea level rise. In fact, new research indicates that the effects of climate change on sea level rise have been underestimated and are likely to be substantially greater than the levels of sea level rise upon which SPP 2.6 is premised.

Conclusion

Much of coastal WA consists of low-lying landscapes, and we are beginning to see the impacts of a rising sea level, such as coastal erosion and inundation, particularly during extreme weather events, which are increasing in frequency. The CSIRO has concluded that sandy coastlines backed by major coastal developments - typifying many of WA's coastal areas - are among the most at-risk regions in Australia.

The protection of Australia's coastal ecosystems and the built environment located in those areas depends on our capacity to implement sustainable coastal planning initiatives. One key factor which has hindered the protection of WA's coastline in the past has been a lack of tight regulations placed on private developers. A balanced approach is needed for these often competing needs and desires, in a way that takes into account the values of the coastal zone, which includes its scenic, aesthetic and ecological qualities; recreational opportunities; and social, indigenous, cultural and

economic importance. To effectively protect our coastline there needs to be increased protection for marine and estuarine reserves, and a restriction on further development in coastal areas, based on scientific data and rational policies flowing from that data, and the profit motives of private developers need to be counterbalanced by the public's interest in not being saddled with the huge costs of rebuilding infrastructure lost to rising waters. We hope that SPP 2.6 can be used to deliver such a balanced, sustainable approach, in light of emerging research suggesting that the serious impacts of climate change are only now becoming truly understood. ■

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EDOWA Annual General Meeting

Please mark your calendars - EDOWA's annual general meeting of members will be held at **6pm on Friday 18 October 2013 at CityWest Lotteries House @ Delhi St West Perth**

The venue can be accessed by train (CityWest station) or by the free yellow or green Cat buses. There is some carparking available at the building and nearby.

Proxy voting forms have been sent to all members; please return them to our office by **11 October** - the address is on the form.

If you plan to attend, **RSVP by 10 October** for catering purposes - edowa@edowa.org.au or (08) 9221 3030.

We look forward to seeing you there!

Court blow to JPP gas project

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On 19 August 2013 WA Supreme Court (Martin CJ) issued his long-awaited decision in the case. In an 83-page opinion, Chief Justice Martin stunned the State by throwing out all three decisions on grounds that (at paragraph 4 of the decision):

[T]here had in fact been no valid assessment of the Browse LNG Precinct Proposal. That is because the assessment was undertaken following a process which was directed and controlled by a number of decisions purportedly taken by the EPA, but which were invalid because they were taken at meetings at which a number, often a majority, and on one significant occasion all of those participating in the decision-making were disqualified from participation by reason of their pecuniary interest in the Proposal. Those invalid decisions were an integral and indispensable part of the assessment process. When the powers of the EPA with respect to the Browse LNG Precinct Proposal were delegated to Dr Vogel on 5 July 2012, he did not himself undertake an assessment of the Proposal, but rather adopted, in substance, a report which had been prepared during the course of the assessment process which was vitiated by the participation of the disqualified members.

In other words, the long-running participation of EPA members with disqualifying conflicts of interest under s12 of the *Environmental Protection Act 1986* (WA) – despite having often disclosed that interest to the EPA’s Chairman – rendered invalid the entire assessment process and the decisions that flowed from it.

Chief Justice Martin’s decision effectively closes the book, at least for now, on the State’s five-year effort to put an LNG Hub on James Price Point. His decision also validates concerns over the integrity of the State’s decision-making process that were raised by community and indigenous activists who opposed the LNG Hub. It was that very lack of integrity in the decision-making process that led the Court to throw out the State’s decisions.

In addition to invalidating the State decisions approving the LNG Hub, the Court also awarded the Wilderness Society and Mr Hunter two-thirds of their legal costs in the judicial review proceeding. Those costs will, ultimately, be borne by the taxpayers of Western Australia, on top of the large sums of taxpayer money spent by the State on analyses, reports and studies related to the LNG Hub proposal – though some \$1.5 billion toward those studies was provided by Woodside Energy (according to statements by the company’s chairman at its 24 April 2013 AGM).

It will take some time for the dust from the Court’s ruling to settle. For one thing, the State has 21 days to appeal the ruling. The Premier may also ask the EPA to take up the strategic proposal again, and indeed he initially declared publicly that this was going to happen, stating ‘I don’t give up.’ (*Sky News Australia* 19 August 2013). On the other hand, he signalled resignation to the project’s demise the next day, telling Parliament that he had failed on the proposal (*The West Australian* 21 August 2013).

There is also a Commonwealth strategic assessment process under way, the future of which is in serious doubt.

Beyond James Price Point, the Court’s decision has potentially broader impacts as it calls into question other decisions that may have been made by the EPA, with potentially disqualified members participating in environmental assessment and other decisions. For example, in a 6 September 2012 letter responding to questions without notice posed by Senator Robin Chapple, then-Environment Minister Bill Marmion advised that either or both Mr Denis Glennon and Dr Chris Whitaker, two of the EPA members with conflicts regarding the Browse LNG proposals, had similarly declared conflicts of interest in 43 other matters considered by the Authority.

The Court’s full decision is on the EDOWA website.

EDOWA hosts lawyers' networking function

Annaleen Harris, Outreach Solicitor

Friday 9 August saw a collection of some of Perth’s finest barristers and legal practitioners gathered against a backdrop of modern art, fine wines and foods at the Turner Gallery in Northbridge.

EDOWA Convenor Johannes Schoombee, in collaboration with the EDOWA, hosted a networking evening for local lawyers who have an interest in environmental issues and the ongoing activities of the EDOWA.

Dr Schoombee opened the evening by introducing the EDOWA and its staff, followed by a light-hearted and well-received presentation by EDOWA Principal Solicitor, Patrick Pearlman, on the organisation’s interests and ambitions.

The EDOWA, a not-for-profit community legal centre, relies to an extent on pro-bono and reduced-rate services of specialist lawyers and scientific experts, and greatly appreciates the generous contribution of intellectual capital already provided to date by lawyers in Perth and wider legal community. Patrick extended a general invitation to legal practitioners and counsel to express interest in assisting in matters of public interest environmental importance.

An amazing spread for the evening was put on by wholefoods caterer Mamapache, with many wines also donated by Dr Schoombee. A special thank-you to Helen Morgan of Turner Galleries for providing the gallery space, and to EDOWA volunteers Sarah Randall, Emily Austin and Samantha Moran for generously giving their time to assist with setting up and the smooth running of the evening. Thank you also to Coordinator Jane Siddall for seeing to every detail of the event organisation, and Administrator Djuna Hallsforth for helping make the night an outstanding success. ■

EDOWA seeks new coordinator

A new full-time Coordinator role is being created, and expressions of interest are being sought until 27 September. A description of the new position is available on EDOWA’s website. Please be patient as staff makes this transition.

Federal election effect on environment

from page 1

The Family First Party's website makes clear that the party rejects the idea of man-induced climate change and the notion that carbon dioxide is a pollutant. The Nick Xenophon Group is likely to be centre-left, while the Palmer United Party will likely be centre-right. The two sporting parties are anyone's guess.

So where does that leave us? Possibly facing a double-dissolution in the near term, as the Abbott government seeks to win Senate support to rewind policies pushed through by the ALP during the Rudd-Gillard-Rudd governments. But even if the government holds, environmentalists have good cause to be concerned about what its "environmental footprint" will look like. The new government has already announced its intention to re-boot the mining industry and restore an appetite for investment, by cutting so-called environmental "green tape".

For example, as part of a long-term agreement with state and territory governments, the LNP has promised to delegate to the states federal approvals for actions that are likely to have significant impacts on matters of national environmental significance under the *Environmental Protection and Biodiversity Conservation Act 1999*. This approach was first tabled by the Council of Australian Governments (COAG) as part of the Gillard government's environmental reform agenda in April 2012. The COAG proposal was scrapped – or at least halted – in the face of withering criticism and lobbying by environmentalists around the country. Among other things, opponents debunked the business sector's economic case for the proposal. Opponents also argued forcefully that states cannot be trusted with the approvals process, since in many cases states are the proponents of development that require federal review. Finally, opponents noted that the proponents of delegating federal approvals to states failed to properly account for or calculate the economic benefits of a clean environment and healthy ecosystems and biodiversity.

The LNP government has also indicated that it will suspend recently-completed management plans for Australia's new marine parks, due to come into effect in July 2014, and create a scientific panel to review the park boundaries. Australia's new marine parks would have been expanded from less than one million to more than three million square kilometres, and were intended to allow natural and whole-of-ecosystem functions to occur uninterrupted, in order to protect and promote biodiversity and fish stocks in Australian waters. Environmentalists fear these resources may now be jeopardised if the marine parks are scaled back.

On a further economic front, there are questions whether the LNP government will continue COAG's Coal Seam Gas (CSG) and Large Coal Mining Development National Partnership Agreement. This agreement was the result of an initiative by four states – NSW, Vic, Qld and SA – to investigate the cumulative impacts of proposed CSG developments using independent scientific expert advice before any projects go ahead. Australia has large reserves of CSG, mainly in Qld and NSW. While there are potential

CSG reserves in WA, the bulk of natural gas reserves are of a different variety, primarily shale and "tight" gas.

The new government's approach to dealing with climate change also promises to rattle environmentalists. The Howard government refused to ratify the UN 1997 Kyoto Protocol, and Australia ratified Kyoto only after the Rudd government came to power in 2007. The LNP's Direct Action plan will now be government policy, and guarantees an effort to abolish the Gillard government's carbon tax. Environmental advocates anticipate that the Clean Energy Finance Corporation, the Climate Change Authority, and the Energy Security Fund will all be dismantled; and there is little evidence that any programs to encourage or invest in renewables and energy efficiency will likely be forthcoming under the new government.

For environmentalists in particular, the next few years promise to be a very hard slog indeed. ■

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We're losing a lawyer but gaining a baby!

EDOWA is sad to announce that it's losing one of its Outreach Solicitors, Annaleen Harris (at right), for the next year or so.

On the other hand we're glad to report that Annaleen's leaving us for all the right reasons – to care for her soon-to-be delivered baby. Annaleen is due on 29 October (place your bets for the gender / delivery date pool!) and will be taking parental leave for 12 months. This will be the first child for Annaleen and her husband Dean, and we wish them the best of luck on their adventure into parenthood.

Annaleen's cases have been allocated to the other solicitors and we anticipate hiring a solicitor in the very near future to fill in while she's on leave. Meanwhile, we're a bit short-handed, so please excuse any delays in responding to your requests for assistance. ■



Other staff changes

At the end of September Jane and Djuna, EDOWA's dedicated administrative and fundraising staffers, will be leaving. Djuna intends to dedicate more time to her Honours dissertation and complete further studies in fitness, and Jane also wishes to broaden her knowledge into the field of natural remedies. Both say they have learnt from working at a not-for-profit organisation and enjoyed getting to know the staff, volunteers and members over the past year. We wish Jane and Djuna much success in their future endeavours, and thank them for all their hard work. ■

