

# DEVELOPMENTS IN QUEENSLAND

## Saved or Under Seige

The 1991 Queensland conference on Environmental Laws "Saved or Under Siege?" will be held on Great Keppel Island from 15 to 17 May 1992. Enquiries in relation to the conference can be directed to Carmel Coyne, the Executive Officer in Queensland, on telephone (07) 832 4865 and facsimile (07) 832 4233. The program is in the process of being finalised and the registration form will be available for distribution in March 1992. Should you require a registration form, please contact Carmel to make sure that you are on the list to receive one. Arrangements have been made with Australian Resorts and Australian Airlines for a comprehensive conference package. The conference will commence at 2.00 pm on Friday, 15 May 1992 and finish at 1.30 pm on Sunday, 17 May 1992. Block reservations are being held on some flights. Details can be obtained from Chelle Gillespie at Australian Airlines Group Travel on telephone (07) 233 2239. The registration fee has remained the same for this year as it was in 1991 - for members \$345 and for non-members \$425. The major sponsors for the conference are Cooper Grace & Ward, Solicitors, Kinsey Bennett & Gill, Solicitors, Henderson Trout in association with Clayton Utz, Solicitors, Freehill Hollingdale & Page, Solicitors and Schomburgk & Long, Town Planning and Environment Consultants.

## Declaratory and injunctive jurisdiction of the Planning and Environment Court

Under Section 2.24 of the Local Government (Planning and Environment Act). This Act was passed in 1990 and came into force on 15 April 1991. By that time the Local Government (Planning and Environment) Act Amendment Act 1991 (Act No. 8 of 1991) had been assented to and came into force on 15 April 1991. Since then the Local Government (Planning and Environment) Amendment Act (No. 2) 1991 came into force on 11 December 1991.

In the Second Amending Act a new Section 2.25 was inserted which allows the Planning and Environment Court to give interlocutory injunctive relief and a discretion as to whether or not an undertaking as to damages is required.

Both the declaratory and injunctive powers are limited by the terms of Section 2.24. The drafting

is unduly restrictive. For example, a Declaration is limited to a question of construction arising under a Planning Scheme but not as to a question of construction under the Act itself. The injunctive powers only relate to restraining offences or likely offences. Being in the nature of civil proceedings, Section 2.24 does not allow for the Planning and Environment Court to impose any penalty in the proceedings where an offence has been created. The penalty provisions come under Section 2.23 and relate to proceedings in the Magistrates Court., For breaches of orders made under Section 2.24 a separate offence (similar to contempt of Court) is included but that requires separate proceedings. Perhaps further legislative reform could be contemplated by way of civil penalties relating to matters within the jurisdiction of the Planning and Environment Court under Section 2.24.

It is still early days in this new legislation and undoubtedly as Section 2.24 is used there will be opportunities to see the full scope of what has been provided. Already there are two Appeals to the Court of Appeal which have not yet been determined. One relates to the scope of the jurisdiction under Section 2.24.

## Amendments to the Supreme Court Act

Now in force is the Supreme Court of Queensland Act 1991. In the planning and environment fields this means that Appeals are now made (on points of law and jurisdiction only) to the newly established Court of Appeal rather than to the Full Court of the Supreme Court as it used to be. The 1991 Act restructures the Supreme Court into a trial division and a Court of Appeal. The Court of Appeal has a President and three Court of Appeal Judges. The Senior Puisne Judge is now the Senior Judge Administrator.

The Supreme Court of Queensland Act 1991 also establishes the Litigation Reform Commission under Section 74. Its functions and powers are set out in Sections 75 and 76. The President of the Court of Appeal chairs the Commission. The other Judges of Appeal are members of the Commission and other persons may be appointed as members. It is anticipated that reforms to the Court structure will be referred to the Litigation Reform Commission.

Two examples of the Court exercising its jurisdiction under Section 2.24 of the Local Government (Planning and Environment) Act are set out below by way of case notes.

## Vegetation Protection Ordinance

On 30 November 1991 Brisbane City Council introduced a new Chapter 22 of its Ordinances. These deal with vegetation protection. The Council may propose a Vegetation Protection Order

and notify the "affected person" (a defined term in the Ordinances) who then have a right to make submissions by a specified date not earlier than one month after the Council proposes to make such an Order. Certain notifications need to be given as to the proposal to make a Vegetation Protection Order.

Individuals may request the Council to take steps to make a Protection Order.

A Register is kept of Protection Orders. Protection Orders may be revoked. There is power to make interim Protection Orders. Approval is required for a person who wishes to damage or interfere with vegetation which is the subject of a current Vegetation Protection Order.

There are no rights of appeal in relation to these provisions except on administrative law grounds which might take one to the Supreme Court for a Prerogative Writ.

These Ordinances are in addition to any environmental considerations which might apply under individual Planning Schemes in Queensland. The Ordinances are not part of the Planning Scheme for the City of Brisbane.

#### **Contaminated Land**

The Contaminated Land Act 1991 came into force on 1 January 1992. The provisions of the Act generally follow what was anticipated to be the subject of regulation. The Appeals provisions are set out in Part 6 of the Act being Sections 40 to 42. Appeals are limited to those matters which are set out in this part of the Act. The Appeal is to the Planning and Environment Court established under the Local Government (Planning and Environment) Act 1990 and the Rules of Court made under that Act apply in relation to Appeals under this Act. The Director of the Bureau of Emergency Services is entitled to appear and be heard either personally or represented by an Officer of the Bureau or by Counsel or Solicitor as is provided for under Section 41(2) of the Act. The Court's powers in relation to the hearing of an Appeal are set out in Section 42 of the Act.

It is understood that as other environmental legislation is introduced in Queensland, similar provisions relating to Appeals will refer matters to the Planning and Environment Court. This is a welcomed approach to the use of a specialist tribunal to handle planning and environmental law matters.

#### **Coastal Management**

During 1991 (and it is expected to continue during 1992 at least) much has been said about coastal management in Queensland. The Environmental Law Association made a submission to the Government on a Green Paper which was produced in 1992. The University of Queensland held a symposium in May 1991 dealing with a variety of aspects of coastal management.

Coastal management will be discussed as part of the proceedings for the 1992 Queensland conference on Great Keppel Island from 15 to 17 May 1992.

An article on "Experiences in Coastal Management in North America and Australia" by Roger Maguire has been published in the Queensland Lawyer. For those interested in following up on this article, it is found in 12 QL 121 being in Part 4 of the Volume and received in February 1992.

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